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## IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION

BRIAN POSTRELKO	)	
Plaintiff,	)	
Vs.	)	No.: 2021L006834
	)	
CITY OF CHICAGO, a Municipal	)	
Corporation, POLICE DEPARTMENT, and officer CARRIE A. COONEY,	)	
individually, and as an agent and	)	
employee of the CITY OF CHICAGO,	)	
	)	
Defendants.	)	

#### **COMPLAINT AT LAW**

NOW COMES the Plaintiff, BRIAN POSTRELKO, by and through his attorneys, CUDA LAW OFFICES, LTD., and complaining of the Defendants, CITY OF CHICAGO, a Municipal Corporation, POLICE DEPARTMENT and officer CARRIE A. COONEY, individually and as an agent and employee of the CITY OF CHICAGO, states as follows:

## COUNT I – VIOLATION OF HUMAN RIGHTS ACT BRIAN POSTRELKO vs CITY OF CHICAGO

- 1) Defendant, CITY OF CHICAGO, a Municipal Corporation, (hereinafter "CITY OF CHICAGO"), was and still is a duly organized and existing corporation in and about the City of Chicago, County of Cook and State of Illinois.
- 2) At all times relevant to this Complaint, Defendant, CARRIE A. COONEY, individually, was a police officer and agent and employee of Defendant, CITY OF CHICAGO.
- 3) On or about January 4, 2021, Plaintiff, BRIAN POSTRELKO, was offered a position with the CITY OF CHICAGO, which was at their Headquarters and within the Awards Department.

- 4) Throughout the course of BRIAN POSTRELKO'S employment with the CITY OF CHICAGO between January 2021, and March 2021, the Defendant, CARRIE A. COONEY, as an agent and employee of Defendant, CITY OF CHICAGO, on several occasions, made inappropriate comments and advances towards BRIAN POSTRELKO.
- 5) During these encounters Defendant CARRIE A. COONEY as agent and employee of Defendant, CITY OF CHICAGO:
  - a. Took an unconsented and inappropriate picture of BRIAN POSTRELKO's buttocks;
  - b. Pulled BRIAN POSTRELKO by his backpack without his consent;
  - c. Touched BRIAN POSTRELKO on his back and neck without his consent;
  - d. Grazed up against BRIAN POSTRELKO's buttocks and back without his consent;
  - e. Grabbed and fixed BRIAN POSTRELKO's shirt collar without his consent;
  - f. Violated social distancing protocols;
  - g. Made inappropriate and unwanted sexual comments towards BRIAN POSTRELKO;
  - h. Sexually harassed BRIAN POSTRELKO;
  - i. Retaliated against BRIAN POSTRELKO for denying her inappropriate and unwanted advances;
  - j. Sexually discriminated against BRIAN POSTRELKO on the basis of his sex.
- 6) During the course of these encounters, Defendant CITY OF CHICAGO, knew or should have known about the inappropriate conduct directed at BRIAN POSTRELKO and failed to take appropriate action.



- 7) On each occasion during which the Defendant CARRIE A. COONEY made the foregoing inappropriate and sexually related overtures, BRIAN POSTRELKO, informed the Defendant that he objected to the advances, behavior and comments.
- 8) For purposes of this Complaint, CITY OF CHICAGO, was at all times herein Plaintiff's employer as contemplated by 775 ILCS 5/2-101(B)(1)(b).
- 9) At all times relevant, Plaintiff was an employee of, CITY OF CHICAGO, as contemplated by 775 ILCS 5/2-101(A)(1).
- 10) For purposes of this Complaint, Defendant, CARRIE A. COONEY, was a managerial employee and agent of Defendant CITY OF CHICAGO, as contemplated by 775 ILCS 5/2-102(D) and at all times relevant to this Complaint had managerial and supervisory authority over BRIAN POSTRELKO in his capacity as an employee of Defendant, CITY OF CHICAGO.
- 11) As a managerial and supervisory employee and agent of Defendant CITY OF CHICAGO, Defendant CARRIE A. COONEY engaged in the foregoing conduct set forth in Paragraphs 5.
- 12) This action is brought pursuant to Article II of the Illinois Human Rights Act [775 ILCS 5/2-101 et seq.].
- 13) The forgoing acts perpetrated against BRIAN POSTRELKO by the Defendant CARRIE A. COONEY constituted acts of sexual harassment, in violation of 775 ILCS 5/2-102(D).
- 14) Within 180 days of the forgoing acts of sexual harassment, BRIAN POSTRELKO brought a Charge of Discrimination against the Defendant CITY OF CHICAGO, before the



Illinois Department of Human Rights (hereinafter "the Department"), as contemplated by 775 ILCS 5/7A-102. A copy of said Charge of Discrimination is attached hereto as Exhibit A.

- 15) BRIAN POSTRELKO received his Notice of Rights letter from the EEOC on May 24, 2021. A copy of said Notice of Rights letter is attached hereto as Exhibit B.
- 16) As a result of the foregoing acts of sexual harassment perpetrated against him by the Defendant CARRIE A. COONEY, who was at the time acting as an agent of Defendant, CITY OF CHICAGO, and having managerial authority over BRIAN POSTRELKO, Plaintiff suffered severe and permanent emotional distress and psychological suffering and has suffered economic losses, which are a direct and proximate result of the foregoing harassment.
- 17) The acts of the Defendants were so outrageous as to warrant imposition of punitive damages authorized by the Illinois Human Rights Act in order to deter other employers from similar acts.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the Plaintiff and against the Defendant, CITY OF CHICAGO, for actual and punitive damages in an amount in excess of \$50,000.00.

## COUNT II – BATTERY BRIAN POSTRELKO vs CITY OF CHICAGO

- 18-28) Plaintiff, BRIAN POSTRELKO, adopts and realleges each and every allegation of Paragraphs 1 through 11 of Count I above as and for Paragraphs 18-28 of Count II of his Complaint as though fully set forth herein.
- 29) Between January 2021, and March 2021, Defendant CARRIE A. COONEY, as agent and employee of Defendant, CITY OF CHICAGO, without the consent of BRIAN POSTRELKO, made offensive physical contact with Plaintiff, causing him apprehension for his personal safety.



- 30) Contact with BRIAN POSTRELKO as set forth in Paragraph 5, constituted impermissible touching and battery perpetrated against BRIAN POSTRELKO.
- 31) As a direct and proximate result of the acts of battery perpetrated against him by Defendant CARRIE A. COONEY, as agent and employee of Defendant CITY OF CHICAGO, BRIAN POSTRELKO has suffered humiliation, shame and emotional distress.
- 32) The conduct of Defendant CARRIE A. COONEY, as agent and employee of Defendant CITY OF CHICAGO, is so outrageous as to warrant an award of punitive damages to deter others from similar conduct as authorized and contemplated by the Illinois Human Rights Act.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the Plaintiff and against the Defendant, CARRIE A. COONEY, for actual and punitive damages in an amount in excess of \$50,000.00.

## COUNT III – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS BRIAN POSTRELKO vs CITY OF CHICAGO

- 33-43) Plaintiff, BRIAN POSTRELKO, adopts and realleges each and every allegation of Paragraphs 1 through 11 of Count I above as and for Paragraphs 33-43 of Count III of his Complaint as though fully set forth herein.
- 44) The inappropriate sexual advances and impermissible touching of the Plaintiff as set forth in Paragraph 5 hereof were willful and deliberate and were of such a character that any reasonable person would know they would cause the Plaintiff, BRIAN POSTRELKO, to suffer emotional distress.
- 45) That in so acting, the Defendant CARRIE A. COONEY, as agent and employee of Defendant, CITY OF CHICAGO, intentionally inflicted emotional distress upon BRIAN POSTRELKO.

- As a result of the conduct of the Defendant CARRIE A. COONEY, as agent and employee of Defendant CITY OF CHICAGO, as expressed in Paragraph 5 hereof, BRIAN POSTRELKO was caused to suffer severe and permanent emotional distress.
- 47) The conduct of the Defendant CARRIE A. COONEY, as agent and employee of Defendant CITY OF CHICAGO, was so outrageous as to warrant an award of punitive damages to deter others from similar conduct as authorized and contemplated by the Illinois Human Rights Act.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the Plaintiff and against the Defendant, CITY OF CHICAGO, for actual and punitive damages in an amount in excess of \$50,000.00.

### COUNT IV – VIOLATION OF HUMAN RIGHTS ACT BRIAN POSTRELKO vs CARRIE A. COONEY, Individually

- 48) At all times relevant to this Complaint, Defendant CARRIE A. COONEY, individually was a police officer and agent and employee of Defendant, CITY OF CHICAGO.
- 49) On or about January 4, 2021, Plaintiff BRIAN POSTRELKO was offered a position with the CITY OF CHICAGO.
- 50) Throughout the course of BRIAN POSTRELKO'S employment with the CITY OF CHICAGO between January 2021, and March 2021, the Defendant, CARRIE A. COONEY, as an agent and employee of Defendant, CITY OF CHICAGO, on several occasions, made inappropriate comments and advances towards BRIAN POSTRELKO.
  - 51) During these encounters Defendant CARRIE A. COONEY, individually:
    - a. Took an unconsented and inappropriate picture of BRIAN POSTRELKO's buttocks;
    - b. Pulled BRIAN POSTRELKO by his backpack without his consent;

- c. Touched BRIAN POSTRELKO on his back and neck without his consent;
- d. Grazed up against BRIAN POSTRELKO's buttocks and back without his consent;
- e. Grabbed and fixed BRIAN POSTRELKO's shirt collar without his consent;
- f. Violated social distancing protocols;
- g. Made inappropriate and unwanted sexual comments towards BRIAN POSTRELKO;
- h. Sexually harassed BRIAN POSTRELKO;
- i. Retaliated against BRIAN POSTRELKO for denying her inappropriate and unwanted advances; and
- j. Sexually discriminated against BRIAN POSTRELKO on the basis of his sex.
- 52) On each occasion during which the Defendant CARRIE A. COONEY made the foregoing inappropriate and sexually related overtures, BRIAN POSTRELKO informed the Defendant that he objected to the advances, behavior and comments.
- 53) For purposes of this Complaint, CITY OF CHICAGO, was at all times herein Plaintiff's employer as contemplated by 775 ILCS 5/2-101(B)(1)(b).
- 54) At all times relevant, Plaintiff was an employee of, CITY OF CHICAGO, as contemplated by 775 ILCS 5/2-101(A)(1).
- 55) For purposes of this Complaint, Defendant, CARRIE A. COONEY, was a managerial employee and agent of Defendant CITY OF CHICAGO, as contemplated by 775 ILCS 5/2-102(D) and at all times relevant to this Complaint had managerial and supervisory authority over BRIAN POSTRELKO in his capacity as an employee of Defendant, CITY OF CHICAGO.

- 56) As a managerial and supervisory employee and agent of Defendant CITY OF CHICAGO, Defendant CARRIE A. COONEY engaged in the foregoing conduct set forth in Paragraph 5.
- 57) This action is brought pursuant to Article II of the Illinois Human Rights Act [775] ILCS 5/2-101 et seq.].
- The forgoing acts perpetrated against BRIAN POSTRELKO by the Defendant 58) CARRIE A. COONEY constituted acts of sexual harassment, in violation of 775 ILCS 5/2-102(D).
- 59) Within 180 days of the forgoing acts of sexual harassment, BRIAN POSTRELKO brought a Charge of Discrimination against the Defendant CITY OF CHICAGO, before the Illinois Department of Human Rights (hereinafter "the Department"), as contemplated by 775 ILCS 5/7A-102. A copy of said Charge of Discrimination is attached hereto as Exhibit A.
- 60) BRIAN POSTRELKO received his Notice of Rights letter from the EEOC on May 24, 2021. A copy of said Notice of Rights letter is attached hereto as Exhibit B.
- 61) As a result of the foregoing acts of sexual harassment perpetrated against him by the Defendant CARRIE A. COONEY, individually, who at that time had managerial authority over BRIAN POSTRELKO, Plaintiff suffered severe and permanent emotional distress and psychological suffering and has suffered economic losses, which are a direct and proximate result of the foregoing harassment.
- 62) The acts of the Defendants were so outrageous as to warrant imposition of punitive damages authorized by the Illinois Human Rights Act in order to deter other employers from similar acts.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the

Plaintiff and against the Defendant, CARRIE A. COONEY, individually, for actual and punitive damages in an amount in excess of \$50,000.00.

### <u>COUNT V – BATTERY</u> BRIAN POSTRELKO vs CARRIE A. COONEY, Individually

- 63-71) Plaintiff, BRIAN POSTRELKO, adopts and realleges each and every allegation of Paragraphs 48 through 56 of Count IV above as and for Paragraphs 63-71 of Count V of his Complaint as though fully set forth herein.
- 72) Between January 2021, and March 2021, Defendant CARRIE A. COONEY, individually, without the consent of BRIAN POSTRELKO, made offensive physical contact with Plaintiff, causing him apprehension for his personal safety.
- 73) Contact with BRIAN POSTRELKO as set forth in Paragraph 5, constituted impermissible touching and battery perpetrated against BRIAN POSTRELKO.
- 74) As a direct and proximate result of the acts of battery perpetrated against him by Defendant CARRIE A. COONEY, individually, Plaintiff BRIAN POSTRELKO has suffered humiliation, shame and emotional distress.
- 75) The conduct of Defendant CARRIE A. COONEY, individually, is so outrageous as to warrant an award of punitive damages to deter others from similar conduct as authorized and contemplated by the Illinois Human Rights Act.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the Plaintiff and against the Defendant, CARRIE A. COONEY, individually, for actual and punitive damages in an amount in excess of \$50,000.00.

## COUNT VI – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS BRIAN POSTRELKO vs CARRIE A. COONEY, Individually

76-84) Plaintiff, BRIAN POSTRELKO, adopts and realleges each and every allegation of Paragraphs 48 through 56 of Count IV above as and for Paragraphs 76-84 of Count VI of his Complaint as though fully set forth herein.

- 85) The inappropriate sexual advances and impermissible touching of the Plaintiff as set forth in Paragraph 5 hereof were willful and deliberate and were of such a character that any reasonable person would know they would cause the Plaintiff, BRIAN POSTRELKO, to suffer emotional distress.
- 86) That in so acting, the Defendant CARRIE A. COONEY, individually, intentionally inflicted emotional distress upon BRIAN POSTRELKO.
- As a result of the conduct of the Defendant CARRIE A. COONEY, individually, as expressed in Paragraph 5 hereof, Plaintiff BRIAN POSTRELKO was caused to suffer severe and permanent emotional distress.
- 88) The conduct of the Defendant CARRIE A. COONEY, individually, was so outrageous as to warrant an award of punitive damages to deter others from similar conduct as authorized and contemplated by the Illinois Human Rights Act.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the Plaintiff and against the Defendant, CARRIE A. COONEY, individually, for actual and punitive damages in an amount in excess of \$50,000.00.

Respectfully submitted

By:

Attorney for Plaintiff

Anthony Euda

Attorney No: 27099 CUDA LAW OFFICES, LTD.

6525 W. North Avenue, Suite 204 Oak Park, Illinois 60302

708-383-4900



\*210524.012 9 4 \*

EEOC Form 5 (11/09)			FILED			
CHARGE OF DISCRIMINATION	Charge		Agency(ies) charge PM No(s)RIS Y. MARTINEZ			
This form is affected by the Privacy Act of 1974. See enclosed Privacy Act		FEPA	CIRCUIT CLERK			
Statement and other information before completing this form.	X	EEOC	44072021692528			
ILLINOIS DEPARTMENT	OF HUMAN	RIGHTS	1392742 <del>2</del> nd EEOC			
State or local Age	ncy, if any					
Name (indicate Mr., Ms., Mrs.)  MR. BRIAN POSTRELKO		Home Phone	Year of Birth			
	and ZIP Code	(773) 972-70	009   1977			
7061 NORTH KEDZIE AVENUE, STE 1713, CHICA	AGO,IL 60					
Named is the Employer, Labor Organization, Employment Agency, Appr That I Believe Discriminated Against Me or Others. (If more than two, Ii	enticeship Com ist under PARTIC	mittee, or State or Lo CULARS below.)	cal Government Agency			
Name		No. Employees, Members	Phone No.			
CHICAGO POLICE DEPARTMENT  Street Address  City. State	and ZIP Code	501+	(312) 746-6000			
3510 SOUTH MICHIGAN AVENUE, CHICAGO, IL	60653	No. Employees, Members	Phone No.			
		3. 3.				
Street Address City, State and ZIP Code						
DISCRIMINATION BASED ON (Check appropriate box(es).)  DATE(S) DISCRIMINATION TOOK PLACE  Earliest Latest						
X RETALIATION AGE DISABILITY GET OTHER (Specify)	CONTINUING ACTION					
I began my employment with Respondent on or about October 31, 2005. My current position is Police Officer. During my employment, I have been subjected to sexual harassment. I was also subjected to different terms and conditions of employment, including but not limited to, harsher work assignments. I complained to Respondent.  I believe I have been discriminated against because of my sex, male, and in retaliation for engaging in a protected activity, in violation of Title VII of the Civil Rights Act of 1964, as amended.  DEPT. OF HUMAN RIGHTS INTAKE DIVISION  May 24, 2021 RECEIVED						
	_	BY:	1-04			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.  I declare under penalty of perjury that the above is true and correct.	I swear or affi	rm that I have read the best of my knowledge	t Local Agency Requirements  ne above charge and that it e, information and belief.			
Digitally signed by Brlan Postrelko on 05-12-2021 02:00 PM EDT	SUBSCRIBED AN ( <i>month, day, ye</i>	ND SWORN TO BEFORE M ear)	E THIS DATE			



EEOC Form 161 (11/2020)

#### U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

5 0 0 8 8 9 9 4 \*

DISMISSAL	AND	NOTICE	OF RIGHTS	2
DIGINIOGAL	AIND	MOTICE	OF INIGHT	3

To:	Brian Postrelko				
	7061 North Kedzie Avenue				
	STE 1713				
	Chicago, IL 60645				

rom: Chicago District Office

230 S. Dearborn Suite 1866 Chicago, IL 60604

On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No. EEOC Representative

Telephone No.

\*\*\* \*\*\*\*

Katarzyna Hammond,

Investigator

(312) 872-9703

440-2021-02528

	HANNEL THE STATE OF THE STATE O
EEO	C IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:
	The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

The EEOC issues the following determination: The EEOC will not proceed further with its investigation, and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.

The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

Other (briefly state)

#### - NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission

Julianne Bowman/eh

5/24/2021

Enclosures(s)

Julianne Bowman, District Director (Date Issued)

CC:

CITY OF CHICAGO LAW DEPARTMENT LABOR

DIVISION

Eileen Geary, Esq.

Chief Assistant Corporation Counsel 2 North LaSalle Street, Suite 660

Chicago, IL 60602

EXHIBIT

B

Case: 1:22-cv-00173 Document #: 1-1 Filed: 01/11/22 Page 13 of 127 PageID #:16

From: Scott Crouch <Scott.Crouch@cityofchicago.org>

Sent: Wednesday, August 18, 2021 12:41 PM

To: Gina LaRose <GLaRose@cudalaw.com>; Anthony Cuda <acuda@cudalaw.com>

 $\textbf{Cc:} \ \ \textbf{Jessica Durkin} \ \ \textbf{Clessica.Durkin@cityofchicago.org>; Pamela Buscemi \ \ \textbf{Pamela.Buscemi@cityofchicago.org>; Sydney \ \ \textbf{Clessica.Durkin@cityofchicago.org>; Clessica.Durkin@cityofchicago.org>; Sydney \ \ \textbf{Clessica.Durkin@cityofchicago.org>; Clessica.Durkin@cityofchicago.org>; Sydney \ \ \textbf{Clessica.Durkin@cityofchicago.org>; Clessica.Durkin@cityofchicago.org>; Clessica.Durkin.Durkin@cityofchicago.org>; Clessica.Durkin@cityofchicago.org>;$ 

Seal <Sydney@cudalaw.com>

Subject: Re: Postrelko v. City - 21 L 6834- Introduction and responsive pleading

Thanks, Gina,

We will draft the motion. We still need to file appearances, but the Clerk's website has been down all week so we've been unable to access the court forms.

Regards, Scott

Get Outlook for Android

From: Gina LaRose <GLaRose@cudalaw.com> Sent: Wednesday, August 18, 2021, 12:39 PM

To: Scott Crouch; Anthony Cuda

Cc: Jessica Durkin; Pamela Buscemi; Sydney Seal

Subject: Re: Postrelko v. City - 21 L 6834- Introduction and responsive pleading

[Warning: External email]

Hello Scott,

We will agree to an extension and to transferring to the commercial calendar. Will you be drafting the motion to transfer?

1

EXHIBIT B

Thank you, Gina LaRose

From: Scott Crouch <Scott.Crouch@cityofchicago.org>

**Sent:** Wednesday, August 18, 2021 11:07 AM **To:** Anthony Cuda <acuda@cudalaw.com>

**Cc:** Jessica Durkin <Jessica.Durkin@cityofchicago.org>; Pamela Buscemi <Pamela.Buscemi@cityofchicago.org>; Gina LaRose <GLaRose@cudalaw.com>; Sydney Seal <Sydney@cudalaw.com>

Subject: RE: Postrelko v. City - 21 L 6834- Introduction and responsive pleading

Hi Tony,

I hope you're doing well. I'm just following up on our email exchange from a few days ago regarding our requested extension to answer/otherwise plead and about transferring to the commercial calendar.

Thanks,

Scott

#### **Scott Crouch**

Pronouns: he/him/his

Assistant Corporation Counsel

City of Chicago Department of Law - Employment Litigation Division

2 N. LaSalle, Suite #640, Chicago, IL 60602

Office (312) 744-8369 Mobile (312) 857-8366

Scott.Crouch@CityOfChicago.org

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From: Anthony Cuda <acuda@cudalaw.com> Sent: Monday, August 9, 2021 10:33 AM

To: Scott Crouch <Scott.Crouch@cityofchicago.org>

**Cc:** Jessica Durkin <Jessica.Durkin@cityofchicago.org>; Pamela Buscemi <Pamela.Buscemi@cityofchicago.org>; Gina LaRose <GLaRose@cudalaw.com>; Sydney Seal <Sydney@cudalaw.com>

Subject: RE: Postrelko v. City - 21 L 6834- Introduction and responsive pleading

[Warning: External email]

Dear Mr. Crouch,

Thank you for your email,. Please add, attorney Gina Larose, and our paralegal, Sydney Seal. We will discuss your email with our client and get back to you.

Sincerely,

Tony

Anthony Cuda

Attorney at Law

**CUDA LAW OFFICES, LTD.** 

6525 West North Avenue, Suite 204

Oak Park, Illinois 60302

Main: 708-383-4900

Case: 1:22-cv-00173 Document #: 1-1 Filed: 01/11/22 Page 15 of 127 PageID #:18

Direct Dial: 708-665-3000

Cell: 312-543-3700 Fax: 708-383-0100 acuda@cudalaw.com



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From: Scott Crouch < Scott.Crouch@cityofchicago.org >

**Sent:** Friday, August 6, 2021 5:25 PM **To:** Anthony Cuda <acuda@cudalaw.com>

Cc: Jessica Durkin < Jessica.Durkin@cityofchicago.org >; Pamela Buscemi < Pamela.Buscemi@cityofchicago.org >

Subject: Postrelko v. City - 21 L 6834- Introduction and responsive pleading

Good evening, Counsel,

I am the attorney representing the City of Chicago in the above referenced matter. My colleague, Jessica Durkin (cc'd on this email) is representing Sgt. Cooney. Pam Buscemi (cc'd) is a paralegal from our office who has been assigned to the matter.

Jessica and I are in receipt of your complaint and are in the process of reviewing the allegations and conducting our initial investigations. Based on the need for further investigation, deadlines in other matters, we plan on filing a motion for extension of time to October 1, 2021, to answer or otherwise plead to the complaint. We wondered if you had any objection to such a request.

Additionally, we saw that the case is assigned to the 22nd floor of the Daley Center. Typically, employment discrimination cases are assigned to the law division's commercial calendar. We wondered if you would oppose a request to transfer to the appropriate division.

Thank you in advance. We look forward to working with you to resolve this matter.

Regards,

Scott

#### **Scott Crouch**

Pronouns: he/him/his

Assistant Corporation Counsel

City of Chicago Department of Law - Employment Litigation Division

2 N. LaSalle, Suite #640, Chicago, IL 60602

Office (312) 744-8369 Mobile (312) 857-8366

Scott.Crouch@CityOfChicago.org

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### Case: 1:22-cv-00173 Document #: 1-1 Filed: 01/11/22 Page 16 of 127 PageID #:19

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Case: 1:22-cv-00173 Document #12-Refsent Júry1/22 Page 17 of 127 PageID #:20
Appearance (12/30/15) CCL N530

# IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION

FILED 8/19/2021 9:48 AM IRIS Y. MARTINEZ CIRCUIT CLERK COOK COUNTY, IL 2021L006834

D: D . 11		COOK COUNTY, IL 2021L006834
Brian Postrelko	 Plaintiff	No. 21 L 6834
V.		C 1 1 Y
City of Chicago, et al.		Calendar: X
	Defendant	
	APPEA	RANCE
☑ GENERAL APPEARANCE		ANCE - FEE PAID; 0909 - APPEARANCE - NO FEE; ANCE FILED - FEE WAIVED
☑ JURY DEMAND		ANCE & JURY DEMAND - FEE PAID ANCE & JURY DEMAND - NO FEE
The undersigned enters the appearance	ce of:	Plaintiff 🗹 Defendant
City of Chicago		
Gity of Girongo		
	(Insert litiga	ant's name.)
		/s/ Scott Crouch
		Signature
☑ INITIAL COUNSEL OF RI ☐ ADDITIONAL APPEARAN		RO SE UBSTITUTE APPEARANCE
Court to be in default.	ll be given to all parti □ Pro Se 99500	es who have appeared and have not been found by the
(Please complete the following contact	ct information.)	
Name: Scott Crouch		<b>Pro Se Only:</b> I have read and agree to the terms of
Atty. for: Defendant City of Chicago		the Clerk's Office Electronic Notice Policy and choose
Address: 2 N. LaSalle Street, Suite 64	0	to opt in to electronic notice from the Clerk's office for this case at this email address:
City/State/Zip: Chicago/IL/60602		
Telephone: 312-744-8369		
Primary Email: scott.crouch@cityofe	chicago.org	
Secondary Email:		
Tertiary Email:		

**EXHIBIT C** 

Case: 1:22-cv-00173 Document #12-Refsent Júry1/22 Page 18 of 127 PageID #:21
Appearance (12/30/15) CCL N530

# IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION

FILED 8/19/2021 9:53 AM IRIS Y. MARTINEZ CIRCUIT CLERK COOK COUNTY, IL 20211 006834

D' D . 11		2021L006834
Brian Postrelko	 Plaintiff	NT 21 I 6834
v.		No. 21 L 6834
0; (0);		Calendar: X
City of Chicago, et al.	 Defendant	
	Derendant	
	APPEA	RANCE
☑ GENERAL APPEARANCE		ANCE - FEE PAID; 0909 - APPEARANCE - NO FEE; ANCE FILED - FEE WAIVED
☑ JURY DEMAND		ANCE & JURY DEMAND - FEE PAID ANCE & JURY DEMAND - NO FEE
The undersigned enters the appearance	ce of:	Plaintiff
Carrie A. Cooney		
Same in Goone,		
	(Insert litiga	ant's name.)
		/s/ Jessica R Durkin
		Signature
☑ INITIAL COUNSEL OF RI ☐ ADDITIONAL APPEARAN		PRO SE UBSTITUTE APPEARANCE
1.	ll be given to all parti	ies who have appeared and have not been found by the
Court to be in default.	□ D C. 00500	
•	☐ Pro Se 99500	
(Please complete the following contact Name: Jessica R Durkin	a miormation.)	<b>Pro Se Only:</b> I have read and agree to the terms of
Atty. for: Defendant City of Chicago		the Clerk's Office Electronic Notice Policy and choose
Address: 2 N. LaSalle Street, Suite 64		to opt in to electronic notice from the Clerk's office for
City/State/Zip: Chicago/IL/60602		this case at this email address:
Telephone: 312-744-2836		
Primary Email: iessica.durkin@cityo:	fchicago.org	
Secondary Email:		
Tertiary Email:		

Location: No hearing scheduled

FILED DATE: 10/1/2021 2:54 PM 2021L006834

# IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION IRIS Y. MARTINEZ CIRCUIT CLERK

FILED 10/1/2021 2:54 PM IRIS Y. MARTINEZ CIRCUIT CLERK COOK COUNTY, IL 20211 006834

BRIAN POSTRELKO,	2021L006834 )
Plaintiff,	) ) )
v.	) No.: 2021 L 006834
CITY OF CHICAGO, a Municipal Corporation, POLICE DEPARTMENT,	) Honorable Daniel J. Kubasiak
and officer CARRIE A. COONEY, individually, and as an agent and employee of the CITY OF CHICAGO,	) Commercial Calendar T )
Defendants.	)

## DEFENDANT CITY OF CHICAGO'S PARTIAL MOTION TO DISMISS PURSUANT TO 735 ILCS 5/2-619.1

Defendant, City of Chicago ("the City") through Celia Meza, corporation counsel for the City moves to dismiss Counts I, II and III of Plaintiff's Complaint pursuant to 735 ILCS 5/2-619(a)(1) and 735 ILCS 5/2-619(a)(9). The City also moves to dismiss Count III of Plaintiff's Complaint pursuant to 735 ILCS 5/2-615. The City states the following in support of its motion.

#### I. INTRODUCTION

Plaintiff alleges the City violated the Illinois Human Rights Act (IHRA), and is liable for Defendant Cooney's alleged battery and intentional infliction of emotional distress (IIED). However, Plaintiff failed to administratively exhaust his IHRA charge and his IHRA claim is thus barred. The IHRA preempts Plaintiff's Battery and IIED claims against the City (Counts II and III, respectively). Plaintiff fails to state a cause of action for IIED, which is a separate basis for dismissing Count III. Additionally, the Chicago Police Department is not a suable entity and thus should be dismissed from the Complaint and stricken from the caption. Finally, the Tort Immunity Act bars Plaintiff's request for punitive damages against the City in counts I, II and III of the Complaint.

#### II. FACTUAL BACKGROUND

### A. Allegations in Plaintiff's Complaint

Plaintiff is a Police Officer with the Chicago Police Department (CPD). Plaintiff alleges that between January and March 2021, his then-supervisor, Defendant Sgt. Carrie Cooney, sexually harassed him. Plaintiff alleges Sgt. Cooney's purported harassment of Plaintiff took the following forms:

- Inappropriate unwanted sexual comments and advances towards Plaintiff, (Complaint ("Comp.") (attached as "Exhibit 1" or "Ex. 1") at ¶¶4, 5);
- Taking a picture of Plaintiff's buttocks without consent, (id. at ¶5);
- Pulling Plaintiff by his backpack without consent, (id.);
- Touching Plaintiff's back and neck without his consent, (id.);
- "Graz[ing] up against [Plaintiff's] buttocks and back without his consent," (id.);
- Grabbing and fixing Plaintiff's shirt collar without his consent, (id.);
- Violating social distancing protocols, (id.);

Plaintiff also concludes that Defendant Cooney retaliated against him but does not specify what form the alleged retaliation took. (*Id.*) Plaintiff also alleges that Defendant Cooney "sexually discriminated" against him, but fails to allege how. (*Id.*)

In Count I of the Complaint, Plaintiff alleges the City, as Defendant Cooney's principal, violated the Illinois Human Rights Act's prohibition on sexual harassment, 775 ILCS 5/2-102(D) ("IHRA"). (Comp., ¶13).

In Count II of the Complaint, Plaintiff alleges that the purported unwanted touching outlined in paragraph 5 of the Complaint constituted battery. (*Id.* at ¶30). Plaintiff alleges the City, as Defendant Cooney's principal, is liable for the alleged acts of battery. (*Id.* at ¶31).

In Count III of the Complaint, Plaintiff alleges the purported "inappropriate sexual advances and impermissible touching of the Plaintiff as set forth in Paragraph 5 [of the Complaint]"

constituted IIED in violation of Illinois common law. (*Id.* at ¶45). Plaintiff further alleges the City is liable for IIED since Defendant Cooney is the City's "agent and employee." (*Id.* at ¶46).<sup>1</sup>

In Counts I, II and III's "Wherefore" paragraphs, Plaintiff requests punitive damages be included in any judgment against the City. (*Id.* at pp. 4 (Count I, "Wherefore" paragraph), 5 (Count II, "Wherefore" paragraph), 6 (Count III, "Wherefore" paragraph)).

### B. Administrative Proceedings before EEOC and failure to notify IDHR

On May 12, 2021, Plaintiff cross-filed a charge of discrimination with the U.S. Equal Employment Opportunity Commission ("EEOC") and the Illinois Department of Human Rights ("IDHR"). (Charge of Discrimination, Ex. 1-A). Pursuant to the cooperative agreement between the EEOC and IDHR, the EEOC conducted the initial investigation of Plaintiff's charge. (A copy of the EEOC May 24, 2021 letter to the IDHR indicating the EEOC would conduct the initial investigation is part of the IDHR file attached hereto as "Exhibit 2" or "Ex. 2" at p. 5).

On May 24, 2021, the IDHR sent Plaintiff a letter notifying him that the IDHR would take no further action on Plaintiff's IDHR charge unless Plaintiff requested the IDHR do so after the EEOC issued its findings. (Ex. 2, p. 1). The IDHR's letter to Plaintiff stated, in relevant part:

Since you filed your discrimination charge initially with the EEOC, the EEOC is the governmental agency responsible for investigating the charge and the investigation will be conducted pursuant to the rules and procedures adopted by the EEOC. The Department will take no action on your charge until the EEOC issues its findings. **After the EEOC issues its findings**, if you want the Department to take any further action on your charge, **you must send the Department a copy of the EEOC's findings within 30 days after service of the EEOC's findings** on you.

If you received the EEOC's findings prior to receipt of this letter, you have 30 days from the date of this letter to send the Department a copy of the EEOC's findings. Upon receipt of the EEOC's findings, the Department will mail you a notice as to what further action the Department may take on your charge. . . .

<sup>&</sup>lt;sup>1</sup> Counts I, II and III are directed only towards the City. Counts IV, V and VI are directed only towards Defendant Cooney and are not addressed in this motion.

Your failure to timely provide the EEOC's findings to the Department will result only in the Department closing your file. . . . If you do not wish to proceed with the Department, you do not need to take any further action.

Id. The EEOC issued its findings to Plaintiff on May 24, 2021. (Ex. 1-B). Per the IDHR, Plaintiff never submitted the EEOC filings to the IDHR: "the [IDHR]'s records do not show that [Plaintiff] notified the Department in writing of his intent to proceed before the Department. Therefore, the Department did not investigate [Plaintiff]'s allegations . . . ." (September 20, 2021 Letter from the IDHR, "Exhibit 3" or "Ex. 3"). The IDHR never issued Plaintiff a right to sue letter. (See Ex. 2 (entire IDHR file received via FOIA) and Ex. 3 (letter from the IDHR explaining charge was not investigated). Plaintiff filed suit on July 6, 2021. (Ex. 1).

#### III. LEGAL STANDARD

A section 2-615 motion to dismiss attacks the legal sufficiency of a complaint by alleging defects on the face of the complaint. *Trilisky v. City of Chicago*, 2019 IL App (1st) 182189, ¶ 28, 143 N.E.3d 925, 935 (citing *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81, 806 N.E.2d 632 (2004)). When ruling on a section 2-615 motion, the relevant question is whether the allegations in the complaint, construed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted. *Trilisky*, 2019 IL App (1st) 182189, ¶ 28 (citing *Canel v. Topinka*, 212 Ill. 2d 311, 317, 818 N.E.2d 311 (2004)).

A motion to dismiss pursuant to 735 ILCS 5/2-619 admits the sufficiency of all well-pleaded facts but argues for the dismissal of the complaint based on an affirmative matter defeating the claim or avoiding its legal effect. *Janda v. United States Cellular Corp.*, 2011 IL App (1st) 103552, ¶ 83. A motion brought pursuant to section 2-619(a)(1) asserts "the court does not have jurisdiction of the subject matter of the action . . . ." 735 ILCS 5/2-619(a)(1). A motion brought pursuant to 2-619(a)(9) asserts "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9).

"Motions with respect to pleadings under Section 2-615, motions for involuntary dismissal or other relief under Section 2-619 . . . may be filed together as a single motion in any combination. A combined motion, however, shall be in parts. Each part shall be limited to and shall specify that it is made under one of Sections 2-615 [or] 2-619 . . . . Each part shall also clearly show the points or grounds relied upon under the Section upon which it is based." 735 ILCS 5/2-619.1.

#### IV. ARGUMENT

A. Plaintiff's IHRA claim against the City (Count I) should be dismissed as Plaintiff failed to administratively exhaust his complaint with the IDHR (Dismissal pursuant to 2-619(a)(9))

Before initiating suit under the IHRA a plaintiff must generally file a charge of discrimination with the IDHR; the plaintiff may then file a civil suit after (1) he receives a final report from the IDHR, or (2) the IDHR fails to issue a report within a year after the charge is filed. 775 ILCS 5/7A-102(D), (G). Where a complainant files a charge with the EEOC and cross-files the charge with IDHR, the IHRA provides that "the [IDHR] shall take no action until the EEOC makes a determination on the charge and after the complainant notifies the Department of the EEOC's determination." 775 ILCS 5/7A-102(A-1)(1). After the EEOC notifies the IDHR that the charge has been filed, the IDHR is required to notify the parties that "the complainant must submit a copy of the EEOC's determination within 30 days after service of the determination by the EEOC on complainant." 775 ILCS 5/7A-102(A-1)(1)(iv). (See Ex. 2, p. 1). Once it receives the EEOC determination, the IDHR will either adopt the EEOC's determination or initiate its own investigation. 775 ILCS 5/7A-102(A-1).

The IHRA provides that "the complainant <u>must</u> submit a copy of the EEOC's determination within 30 days after service of the determination by the EEOC on complainant." 775 ILCS 5/7A-102(A-1)(1)(iv)(emphasis added); (*see* Ex. 2, p. 1 (letter from IDHR to Plaintiff informing him of this requirement). Compliance with such a statutory time limit "is a condition

precedent to the right to seek a remedy before an administrative body, and ... a prerequisite to the acquisition of subject matter jurisdiction." *Bumphus v. Ill. Human Rights Comm'n*, 2021 IL App (5th) 200037-U, ¶ 17, 2021 WL 754596 (internal quotations omitted). Accordingly, where plaintiffs have failed to comply with the 30-day notice requirement, courts have dismissed IHRA claims for lack of exhaustion of administrative remedies. *Donald v. City of Chicago*, 20-CV-6815, 2021 WL 1946335, at \*4 (N.D. Ill. May 14, 2021) (quoting *Jafri v. Signal Funding LLC*, No. 19 C 645, 2019 WL 4824883, at \*2 (N.D. Ill. Oct. 1, 2019) (internal citations omitted).

B. The IHRA preempts Plaintiff's Battery and IIED claims (Counts II & III) and thus the Court does not have subject matter jurisdiction over these claims (Dismissal pursuant to 2-619(a)(1)).

The IHRA clearly states: "[e]xcept as otherwise provided by law, no court of this state shall have jurisdiction over the subject of an alleged civil rights violation other than as set forth in this Act." 775 ILCS 5/8–111(C). The IHRA's definitions of "civil rights violations" include sexual

harassment, (775 ILCS 5/2-102(D)) and retaliation "against a person because he or she has opposed that which he or she reasonably and in good faith believes to be unlawful discrimination [or] sexual harassment in employment. . ." 775 ILCS 5/6-101(A). "Sexual harassment" is defined as

any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

775 ILCS 5/2-101(E).

Illinois and federal courts have repeatedly held that "[t]he IHRA is the exclusive remedy for civil-rights violations. It 'preempts tort claims that are 'inextricably linked' to allegations of sexual harassment." Nischan v. Stratosphere Quality, LLC, 865 F.3d 922, 934 (7th Cir. 2017)(quoting Quantock v. Shared Mktg. Servs., Inc., 312 F.3d 899, 905 (7th Cir. 2002) (citing Maksimovic v. Tsogalis, 177 Ill. 2d 511 (1997)). See Quantock, 312 F.3d 899, 905 (7th Cir. 2002) (IIED claim was preempted by the IHRA because plaintiff alleged that employer's motivation was sexual harassment). The IHRA's preemption provision deprives Illinois' circuit courts of subject matter jurisdiction over all intentional tort actions seeking redress for civil rights violations, such as discrimination, sexual harassment and retaliation. If a tort cause of action relies upon "wrongful and unjustified conduct prohibited by [the Act]" then circuit courts lack subject-matter jurisdiction over that cause of action. Welch v. Illinois Supreme Court, 322 Ill. App. 3d 345, 356-57 (3d Dist. 2001). See also, Veazey v. LaSalle Telecomm., Inc., 334 Ill. App. 3d 926, 934 (1st Dist. 2002); Anderson v. Pistner, 148 Ill. App. 3d 616, 619-20 (1st Dist. 1986). "Claims for assault, battery, and [IIED] that rest solely on allegations of sexual harassment are preempted." Griffin v. Sutton Ford, Inc., 452 F. Supp. 2d 842, 845 (N.D. Ill. 2006)(citing *Quantock*, 312 F.3d 899, 902, 905 (7th Cir. 2002) (IIED claim preempted); *Thomas v.* L'Eggs Prods., Inc., 13 F.Supp. 2d 806, 810 (C.D. Ill. 1998) (battery claim preempted)).

Here, Plaintiff uses the same allegations that form the basis of his IHRA claims to form the bases of his Battery and IIED claims. (See Ex. 1, "Count II, Battery [Plaintiff] v. City of Chicago," at ¶30 (incorporating by reference ¶5 from Count I, violation of the IHRA); see Ex. 1, "Count III, [IIED], [Plaintiff] v. City of Chicago," at ¶44 (same)). Plaintiff acknowledges that his battery and IIED claims arise under the IHRA. (See Ex. 1, "Count II, Battery [Plaintiff] v. City of Chicago," at ¶32 ("the conduct of Defendant Carrie A. Cooney, as agent and employee of Defendant City of Chicago, is so outrageous as to warrant an award of punitive damages to deter others from similar conduct as authorized and contemplated by the Illinois Human Rights Act"); see Ex. 1, "Count III, [IIED], [Plaintiff] v. City of Chicago" at ¶47("the conduct of Defendant Carrie A. Cooney, as agent and employee of Defendant City of Chicago, was so outrageous as to warrant an award of punitive damages to deter others from similar conduct as authorized and contemplated by the Illinois Human Rights Act"). Other than the IHRA, the Complaint does not identify any independent theory of City's alleged liability for the alleged battery and IIED connected with Defendant Cooney's alleged harassing acts. "In other words, the [] battery and IIED claims arise solely as a result of a duty imposed under the IHRA; therefore, these are inextricably linked." Griffin, 452 F. Supp. 2d at 846 (internal citations omitted).

Additionally, the IHRA still preempts intentional tort claims even when a plaintiff fails to properly bring an IHRA claim or does not reference the IHRA at all. *In Geise v. Phoenix Co. of Chicago, Inc.*, 159 Ill. 2d 507, the plaintiff filed only a "common law tort action" alleging, *inter alia*, her employer negligently hired and negligently retained a supervisor who sexually harassed her. 159 Ill. 2d at 509, 517-18. The Illinois Supreme Court nevertheless ruled that the IHRA preempted the tort claims because "the concept of sexual harassment is inextricably linked to [plaintiff's tort claims against her employer]". *Id.*, 159 Ill. 2d at 516–17. Accordingly, as the Court lacks subject-matter jurisdiction over Counts II and III of the Complaint, those Counts should be dismissed.

## C. Plaintiff fails to state a cause of action for IIED and thus Count III should be dismissed (Dismissal pursuant to 2-615).

Defendant Cooney is filing a motion to dismiss concurrently with this motion. In her motion, she asserts that Plaintiff has failed to state a cause of action for IIED and that Count IV (IIED v. Cooney only) should be dismissed pursuant to 735 ILCS 5/2-615. The paragraphs in Count III (IIED vs. City) are nearly identical to the paragraphs in Count IV (compare Ex. 1, ¶44 with ¶85, ¶45 with ¶86, ¶46 with ¶87, ¶47 with ¶88). The City adopts Defendant Cooney's arguments (§ IV.B. (pp. 4-7)) and moves that this Court dismiss Count III of Plaintiff's complaint for failure to state a cause of action for IIED.

## D. The Chicago Police Department is not a suable entity (Dismissal pursuant to 2-619(a)(9)).

While Plaintiff does not direct any allegations towards the Chicago Police Department ("CPD"), Plaintiff does name CPD as a separate defendant in the Complaint's caption. The Court should dismiss CPD from the case and strike references to CPD from the caption as CPD is "an organizational division of the City and therefore not a separate suable entity." *Johnston v. United States Attorney's Office for N. Dist. of Illinois*, 21-CV-1057, 2021 WL 860356, at \*3 (N.D. Ill. Mar. 8, 2021) (quoting *Smith v. City of Chicago Police Dept.*, 937 F.2d 610 (7th Cir. 1991)). The Illinois Supreme Court has also noted that the Chicago Police Department is not a distinct legal entity apart from the City. *Ferguson v. Patton*, 2013 IL 112488, ¶ 30 ("[CPD is] merely a department of the City which does not have separate legal existence") (citing *Jordan v. City of Chicago, Department of Police*, 505 F.Supp. 1, 4 (N.D. Ill. 1980)). *See Ferguson*, 2013 IL 112488, ¶ 30 (collecting cases finding that departments of the City are not distinct legal entities and have "no legal status separate and apart from the City.") Thus, CPD should be dismissed from this case.

## E. The City is Immune from punitive damages (Dismissal pursuant to 2-619(a)(9)).

All three of Plaintiff's claims against the City (Counts I, II and III) seek punitive damages in the "Wherefore" paragraphs. However, the Tort Immunity Act immunizes the City from punitive damages: "Notwithstanding any other provision of law, a local public entity is not liable to pay punitive or exemplary damages in any action brought directly or indirectly against it by the injured party or a third party." 745 ILCS 10/2-102. The portions of the prayers for relief in Counts I, II and III seeking punitive damages against the City should be dismissed.

#### V. CONCLUSION

For these reasons, the City requests the Court dismiss Counts I, II and III with prejudice and dismiss the City from this matter. The City further requests the Court dismiss CPD from this matter as a non-suable entity. Finally, in the alternative, the City requests the Court strike Plaintiff's prayer for punitive damages from Counts I, II and III.

Dated: October 1, 2021 Respectfully submitted,

CELIA MEZA
Corporation Counsel of the City of Chicago

Attorney No.: 90909 City of Chicago, Department of Law Employment Litigation Division 2 North LaSalle Street, Suite 640 Chicago, Illinois 60602 Scott.Crouch@cityofchicago.org (312) 744-8369

Assistant Corporation Counsel

By: s/ Scott Crouch

SCOTT CROUCH

Counsel for Defendant City of Chicago

Courtroom Number: No hearing scheduled Location: No hearing scheduled

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION

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BRIAN POSTRELKO	)	
Plaintiff,	)	
Vs.	)	No.: 2021L006834
CITY OF CHICAGO, a Municipal	)	
Corporation, POLICE DEPARTMENT, and officer CARRIE A. COONEY,	)	
individually, and as an agent and employee of the CITY OF CHICAGO,	)	
Defendants	)	

#### **COMPLAINT AT LAW**

NOW COMES the Plaintiff, BRIAN POSTRELKO, by and through his attorneys, CUDA LAW OFFICES, LTD., and complaining of the Defendants, CITY OF CHICAGO, a Municipal Corporation, POLICE DEPARTMENT and officer CARRIE A. COONEY, individually and as an agent and employee of the CITY OF CHICAGO, states as follows:

### COUNT I – VIOLATION OF HUMAN RIGHTS ACT BRIAN POSTRELKO vs CITY OF CHICAGO

- 1) Defendant, CITY OF CHICAGO, a Municipal Corporation, (hereinafter "CITY OF CHICAGO"), was and still is a duly organized and existing corporation in and about the City of Chicago, County of Cook and State of Illinois.
- 2) At all times relevant to this Complaint, Defendant, CARRIE A. COONEY, individually, was a police officer and agent and employee of Defendant, CITY OF CHICAGO.
- 3) On or about January 4, 2021, Plaintiff, BRIAN POSTRELKO, was offered a position with the CITY OF CHICAGO, which was at their Headquarters and within the Awards Department.



- 4) Throughout the course of BRIAN POSTRELKO'S employment with the CITY OF CHICAGO between January 2021, and March 2021, the Defendant, CARRIE A. COONEY, as an agent and employee of Defendant, CITY OF CHICAGO, on several occasions, made inappropriate comments and advances towards BRIAN POSTRELKO.
- 5) During these encounters Defendant CARRIE A. COONEY as agent and employee of Defendant, CITY OF CHICAGO:
  - Took an unconsented and inappropriate picture of BRIAN POSTRELKO's buttocks;
  - b. Pulled BRIAN POSTRELKO by his backpack without his consent;
  - c. Touched BRIAN POSTRELKO on his back and neck without his consent;
  - d. Grazed up against BRIAN POSTRELKO's buttocks and back without his consent;
  - e. Grabbed and fixed BRIAN POSTRELKO's shirt collar without his consent;
  - f. Violated social distancing protocols;
  - Made inappropriate and unwanted sexual comments towards BRIAN POSTRELKO;
  - h. Sexually harassed BRIAN POSTRELKO;
  - i. Retaliated against BRIAN POSTRELKO for denying her inappropriate and unwanted advances;
  - j. Sexually discriminated against BRIAN POSTRELKO on the basis of his sex.
- 6) During the course of these encounters, Defendant CITY OF CHICAGO, knew or should have known about the inappropriate conduct directed at BRIAN POSTRELKO and failed to take appropriate action.



- 7) On each occasion during which the Defendant CARRIE A. COONEY made the foregoing inappropriate and sexually related overtures, BRIAN POSTRELKO, informed the Defendant that he objected to the advances, behavior and comments.
- 8) For purposes of this Complaint, CITY OF CHICAGO, was at all times herein Plaintiff's employer as contemplated by 775 ILCS 5/2-101(B)(1)(b).
- 9) At all times relevant, Plaintiff was an employee of, CITY OF CHICAGO, as contemplated by 775 ILCS 5/2-101(A)(1).
- 10) For purposes of this Complaint, Defendant, CARRIE A. COONEY, was a managerial employee and agent of Defendant CITY OF CHICAGO, as contemplated by 775 ILCS 5/2-102(D) and at all times relevant to this Complaint had managerial and supervisory authority over BRIAN POSTRELKO in his capacity as an employee of Defendant, CITY OF CHICAGO.
- 11) As a managerial and supervisory employee and agent of Defendant CITY OF CHICAGO, Defendant CARRIE A. COONEY engaged in the foregoing conduct set forth in Paragraphs 5.
- 12) This action is brought pursuant to Article II of the Illinois Human Rights Act [775 ILCS 5/2-101 et seq.].
- 13) The forgoing acts perpetrated against BRIAN POSTRELKO by the Defendant CARRIE A. COONEY constituted acts of sexual harassment, in violation of 775 ILCS 5/2-102(D).
- 14) Within 180 days of the forgoing acts of sexual harassment, BRIAN POSTRELKO brought a Charge of Discrimination against the Defendant CITY OF CHICAGO, before the



Illinois Department of Human Rights (hereinafter "the Department"), as contemplated by 775 ILCS 5/7A-102. A copy of said Charge of Discrimination is attached hereto as Exhibit A.

- 15) BRIAN POSTRELKO received his Notice of Rights letter from the EEOC on May 24, 2021. A copy of said Notice of Rights letter is attached hereto as Exhibit B.
- As a result of the foregoing acts of sexual harassment perpetrated against him by the Defendant CARRIE A. COONEY, who was at the time acting as an agent of Defendant, CITY OF CHICAGO, and having managerial authority over BRIAN POSTRELKO, Plaintiff suffered severe and permanent emotional distress and psychological suffering and has suffered economic losses, which are a direct and proximate result of the foregoing harassment.
- 17) The acts of the Defendants were so outrageous as to warrant imposition of punitive damages authorized by the Illinois Human Rights Act in order to deter other employers from similar acts.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the Plaintiff and against the Defendant, CITY OF CHICAGO, for actual and punitive damages in an amount in excess of \$50,000.00.

### <u>COUNT II – BATTERY</u> BRIAN POSTRELKO vs CITY OF CHICAGO

- 18-28) Plaintiff, BRIAN POSTRELKO, adopts and realleges each and every allegation of Paragraphs 1 through 11 of Count I above as and for Paragraphs 18-28 of Count II of his Complaint as though fully set forth herein.
- 29) Between January 2021, and March 2021, Defendant CARRIE A. COONEY, as agent and employee of Defendant, CITY OF CHICAGO, without the consent of BRIAN POSTRELKO, made offensive physical contact with Plaintiff, causing him apprehension for his personal safety.



- 30) Contact with BRIAN POSTRELKO as set forth in Paragraph 5, constituted impermissible touching and battery perpetrated against BRIAN POSTRELKO.
- 31) As a direct and proximate result of the acts of battery perpetrated against him by Defendant CARRIE A. COONEY, as agent and employee of Defendant CITY OF CHICAGO, BRIAN POSTRELKO has suffered humiliation, shame and emotional distress.
- 32) The conduct of Defendant CARRIE A. COONEY, as agent and employee of Defendant CITY OF CHICAGO, is so outrageous as to warrant an award of punitive damages to deter others from similar conduct as authorized and contemplated by the Illinois Human Rights Act.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the Plaintiff and against the Defendant, CARRIE A. COONEY, for actual and punitive damages in an amount in excess of \$50,000.00.

## COUNT III – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS BRIAN POSTRELKO vs CITY OF CHICAGO

- 33-43) Plaintiff, BRIAN POSTRELKO, adopts and realleges each and every allegation of Paragraphs 1 through 11 of Count I above as and for Paragraphs 33-43 of Count III of his Complaint as though fully set forth herein.
- 44) The inappropriate sexual advances and impermissible touching of the Plaintiff as set forth in Paragraph 5 hereof were willful and deliberate and were of such a character that any reasonable person would know they would cause the Plaintiff, BRIAN POSTRELKO, to suffer emotional distress.
- 45) That in so acting, the Defendant CARRIE A. COONEY, as agent and employee of Defendant, CITY OF CHICAGO, intentionally inflicted emotional distress upon BRIAN POSTRELKO.



- As a result of the conduct of the Defendant CARRIE A. COONEY, as agent and employee of Defendant CITY OF CHICAGO, as expressed in Paragraph 5 hereof, BRIAN POSTRELKO was caused to suffer severe and permanent emotional distress.
- 47) The conduct of the Defendant CARRIE A. COONEY, as agent and employee of Defendant CITY OF CHICAGO, was so outrageous as to warrant an award of punitive damages to deter others from similar conduct as authorized and contemplated by the Illinois Human Rights Act.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the Plaintiff and against the Defendant, CITY OF CHICAGO, for actual and punitive damages in an amount in excess of \$50,000.00.

### <u>COUNT IV – VIOLATION OF HUMAN RIGHTS ACT</u> BRIAN POSTRELKO vs CARRIE A. COONEY, Individually

- 48) At all times relevant to this Complaint, Defendant CARRIE A. COONEY, individually was a police officer and agent and employee of Defendant, CITY OF CHICAGO.
- 49) On or about January 4, 2021, Plaintiff BRIAN POSTRELKO was offered a position with the CITY OF CHICAGO.
- 50) Throughout the course of BRIAN POSTRELKO'S employment with the CITY OF CHICAGO between January 2021, and March 2021, the Defendant, CARRIE A. COONEY, as an agent and employee of Defendant, CITY OF CHICAGO, on several occasions, made inappropriate comments and advances towards BRIAN POSTRELKO.
  - 51) During these encounters Defendant CARRIE A. COONEY, individually:
    - a. Took an unconsented and inappropriate picture of BRIAN POSTRELKO's buttocks;
    - b. Pulled BRIAN POSTRELKO by his backpack without his consent;



- c. Touched BRIAN POSTRELKO on his back and neck without his consent;
- d. Grazed up against BRIAN POSTRELKO's buttocks and back without his consent;
- e. Grabbed and fixed BRIAN POSTRELKO's shirt collar without his consent;
- f. Violated social distancing protocols;
- Made inappropriate and unwanted sexual comments towards BRIAN POSTRELKO;
- h. Sexually harassed BRIAN POSTRELKO;
- i. Retaliated against BRIAN POSTRELKO for denying her inappropriate and unwanted advances; and
- j. Sexually discriminated against BRIAN POSTRELKO on the basis of his sex.
- 52) On each occasion during which the Defendant CARRIE A. COONEY made the foregoing inappropriate and sexually related overtures, BRIAN POSTRELKO informed the Defendant that he objected to the advances, behavior and comments.
- 53) For purposes of this Complaint, CITY OF CHICAGO, was at all times herein Plaintiff's employer as contemplated by 775 ILCS 5/2-101(B)(1)(b).
- 54) At all times relevant, Plaintiff was an employee of, CITY OF CHICAGO, as contemplated by 775 ILCS 5/2-101(A)(1).
- 55) For purposes of this Complaint, Defendant, CARRIE A. COONEY, was a managerial employee and agent of Defendant CITY OF CHICAGO, as contemplated by 775 ILCS 5/2-102(D) and at all times relevant to this Complaint had managerial and supervisory authority over BRIAN POSTRELKO in his capacity as an employee of Defendant, CITY OF CHICAGO.



- 56) As a managerial and supervisory employee and agent of Defendant CITY OF CHICAGO, Defendant CARRIE A. COONEY engaged in the foregoing conduct set forth in Paragraph 5.
- 57) This action is brought pursuant to Article II of the Illinois Human Rights Act [775 ILCS 5/2-101 et seq.].
- The forgoing acts perpetrated against BRIAN POSTRELKO by the Defendant CARRIE A. COONEY constituted acts of sexual harassment, in violation of 775 ILCS 5/2-102(D).
- 59) Within 180 days of the forgoing acts of sexual harassment, BRIAN POSTRELKO brought a Charge of Discrimination against the Defendant CITY OF CHICAGO, before the Illinois Department of Human Rights (hereinafter "the Department"), as contemplated by 775 ILCS 5/7A-102. A copy of said Charge of Discrimination is attached hereto as Exhibit A.
- 60) BRIAN POSTRELKO received his Notice of Rights letter from the EEOC on May 24, 2021. A copy of said Notice of Rights letter is attached hereto as Exhibit B.
- As a result of the foregoing acts of sexual harassment perpetrated against him by the Defendant CARRIE A. COONEY, individually, who at that time had managerial authority over BRIAN POSTRELKO, Plaintiff suffered severe and permanent emotional distress and psychological suffering and has suffered economic losses, which are a direct and proximate result of the foregoing harassment.
- 62) The acts of the Defendants were so outrageous as to warrant imposition of punitive damages authorized by the Illinois Human Rights Act in order to deter other employers from similar acts.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the



Plaintiff and against the Defendant, CARRIE A. COONEY, individually, for actual and punitive damages in an amount in excess of \$50,000.00.

# COUNT V – BATTERY BRIAN POSTRELKO vs CARRIE A. COONEY, Individually

- 63-71) Plaintiff, BRIAN POSTRELKO, adopts and realleges each and every allegation of Paragraphs 48 through 56 of Count IV above as and for Paragraphs 63-71 of Count V of his Complaint as though fully set forth herein.
- 72) Between January 2021, and March 2021, Defendant CARRIE A. COONEY, individually, without the consent of BRIAN POSTRELKO, made offensive physical contact with Plaintiff, causing him apprehension for his personal safety.
- 73) Contact with BRIAN POSTRELKO as set forth in Paragraph 5, constituted impermissible touching and battery perpetrated against BRIAN POSTRELKO.
- 74) As a direct and proximate result of the acts of battery perpetrated against him by Defendant CARRIE A. COONEY, individually, Plaintiff BRIAN POSTRELKO has suffered humiliation, shame and emotional distress.
- 75) The conduct of Defendant CARRIE A. COONEY, individually, is so outrageous as to warrant an award of punitive damages to deter others from similar conduct as authorized and contemplated by the Illinois Human Rights Act.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the Plaintiff and against the Defendant, CARRIE A. COONEY, individually, for actual and punitive damages in an amount in excess of \$50,000.00.

# COUNT VI – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS BRIAN POSTRELKO vs CARRIE A. COONEY, Individually

76-84) Plaintiff, BRIAN POSTRELKO, adopts and realleges each and every allegation of Paragraphs 48 through 56 of Count IV above as and for Paragraphs 76-84 of Count VI of his Complaint as though fully set forth herein.

- 85) The inappropriate sexual advances and impermissible touching of the Plaintiff as set forth in Paragraph 5 hereof were willful and deliberate and were of such a character that any reasonable person would know they would cause the Plaintiff, BRIAN POSTRELKO, to suffer emotional distress.
- 86) That in so acting, the Defendant CARRIE A. COONEY, individually, intentionally inflicted emotional distress upon BRIAN POSTRELKO.
- As a result of the conduct of the Defendant CARRIE A. COONEY, individually, as expressed in Paragraph 5 hereof, Plaintiff BRIAN POSTRELKO was caused to suffer severe and permanent emotional distress.
- 88) The conduct of the Defendant CARRIE A. COONEY, individually, was so outrageous as to warrant an award of punitive damages to deter others from similar conduct as authorized and contemplated by the Illinois Human Rights Act.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the Plaintiff and against the Defendant, CARRIE A. COONEY, individually, for actual and punitive damages in an amount in excess of \$50,000.00.

Respectfully submitted

BA:

Anthony Cuda
Attorney for Plaintiff

Attorney No: 27099 CUDA LAW OFFIC

CUDA LAW OFFICES, LTD. 6525 W. North Avenue, Suite 204 Oak Park, Illinois 60302

708-383-4900



\*210524.012 9 FILED

EEOC Form 5 (11/09)

# CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: **FEPA EEOC** 

(773) 972-7009

No. Employees, Members

501+

No. Employees, Members

Agency rest charge PM No(s)RIS Y. MARTINEZ CIRCUIT CLERK COOK COUNTY 10316834528

### **ILLINOIS DEPARTMENT OF HUMAN RIGHTS** State or local Agency, if any

13927429nd EEOC

Name (indicate Mr., Ms., Mrs.)

Home Phone

Year of Birth

MR. BRIAN POSTRELKO

1977

Street Address

City, State and ZIP Code

### 7061 NORTH KEDZIE AVENUE, STE 1713, CHICAGO, IL 60645

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

Street Address

Phone No. (312) 746-6000

CHICAGO POLICE DEPARTMENT

City, State and ZIP Code

# 3510 SOUTH MICHIGAN AVENUE, CHICAGO, IL 60653

Phone No.

Street Address

City. State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

RACE

COLOR

l X SEX RELIGION

DISABILITY

NATIONAL ORIGIN

Earliest 01-29-2021

Latest 04-06-2021

X RETALIATION

AGE OTHER (Specify)

GENETIC INFORMATION

CONTINUING ACTION

DATE(S) DISCRIMINATION TOOK PLACE

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I began my employment with Respondent on or about October 31, 2005. My current position is Police Officer. During my employment, I have been subjected to sexual harassment. I was also subjected to different terms and conditions of employment, including but not limited to, harsher work assignments. I complained to Respondent.

I believe I have been discriminated against because of my sex, male, and in retaliation for engaging in a protected activity, in violation of Title VII of the Civil Rights Act of 1964, as amended. DEPT. OF HUMAN RIGHTS

INTAKE DIVISION

May 24, 2021

RECEIVED

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

Digitally signed by Brian Postrelko on 05-12-2021 02:00 PM EDT

NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)

BY:

EXHIBIT



EEOC Form 161 (11/2020)

#### U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

5 0 0 8 8 9 9 4 \*

DISMISSAL	AND	NOTICE	OF PI	CHTS
DISMISSAL	ANU	NUTICE	UF K	GHIS

7061 North Kedzie Avenue
STE 1713
Chicago, IL 60645

From: Chicago District Office 230 S. Dearborn Suite 1866 Chicago, IL 60604

	On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))				
EEOC Charge	No. EEOC Representative	Telephone No.			
	Katarzyna Hammond,				
440-2021-0	2528 Investigator	(312) 872-9703			
THE EEOC	IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REAS	ON:			
	The facts alleged in the charge fail to state a claim under any of the statutes enforce	ed by the EEOC.			
	Your allegations did not involve a disability as defined by the Americans With Disabilities Act.				
	The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.				
	Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the allege discrimination to file your charge				
X	The EEOC issues the following determination: The EEOC will not proceed further with its investigation, and makes not determination about whether further investigation would establish violations of the statute. This does not mean the claim. have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.				
	The EEOC has adopted the findings of the state or local fair employment practices a	agency that investigated this charge.			
	Other (briefly state)				

#### - NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age
Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you.
You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission

Julianne Bowman/eh

5/24/2021

Enclosures(s)

Julianne Bowman, District Director (Date Issued)

CC:

CITY OF CHICAGO LAW DEPARTMENT LABOR

DIVISION

Eileen Geary, Esq.

Chief Assistant Corporation Counsel 2 North LaSalle Street, Suite 660

Chicago, IL 60602



JB Pritzker, Governor James L. Bennett, Director

May 24, 2021

Brian Postrelko

Chicago, IL

Re: Brian Postrelko v. Chicago Police Department #210524.012

#### Dear Complainant:

You are receiving this letter because you filed a charge with the United States Equal Employment Opportunity Commission (EEOC). The EEOC and the Illinois Department of Human Rights (Department) are parties to a cooperative agreement. Under this agreement, when you filed your charge of discrimination with the EEOC, a copy of the charge was automatically filed with the Department. The Department is keeping a copy of your EEOC charge on file to preserve jurisdiction under Illinois law.

Since you filed your discrimination charge initially with the EEOC, the EEOC is the governmental agency responsible for investigating the charge and the investigation will be conducted pursuant to the rules and procedures adopted by the EEOC. The Department will take no action on your charge until the EEOC issues its findings. After the EEOC issues its findings, if you want the Department to take any further action on your charge, you must send the Department a copy of the EEOC's findings within 30 days after service of the EEOC's findings on you. Please also send a one sentence written statement requesting that the Department investigate your charge and include the above Control Number. You may submit a copy of the EEOC's findings by either of the following methods:

Send your EEOC findings and written statement via U.S. Postal certified mail, return receipt requested, to: Illinois By Mail: Department of Human Rights, Attn: EEOC Referred Charges/Intake Unit, 100 W. Randolph St., Ste. 10-100, Chicago, IL 60601.

In Person: Bring an original and one copy of your EEOC findings and written statement to the Department. The Department will stamp and return the copies to you for your records.

If you received the EEOC's findings prior to receipt of this letter, you have 30 days from the date of this letter to send the Department a copy of the EEOC's findings. Upon receipt of the EEOC's findings, the Department will mail you a notice as to what further action the Department may take on your charge.

The 365-day time period for the Department to investigate your EEOC charge is tolled while the EEOC is investigating your charge and does not begin to run until the EEOC issues its findings. Your failure to timely provide the EEOC's findings to the Department will result only in the Department closing your file. This process does not affect the investigation of your charge at EEOC. If you do not wish to proceed with the Department, you do not need to take any further action.

This letter does not apply to any settlement of this charge the parties have made with the EEOC.

If you have any questions, please contact Thomas F. Roeser, Pre-Investigations Coordinator, at (312) 814-6295. Please do not contact the EEOC.

ILLINOIS DEPARTMENT OF HUMAN RIGHTS.

PRE1-EEOC 30 Rev 8/18

100 West Randolph Street, Suite 10-100, Chicago, IL 60601, (312) 814-6200, TTY (866) 740-3953, Housing Line (800) 662-3942 2309 West Jefferson Street, Springfield, IL 62702, (217) 785-5100 2309 West Main Street, Marion, IL 62959 (618) 993-7463 www.illinois.gov/dhr

Chicago Police Department, C/O Eileen Geary 2 N. LaSalle St., Suite 660 Chicago, IL 60602

Case: 1:22-cv-00173 Document #: 1-1 Filed: 01/11/22 Page 42 of 127 PageID #:45

EEOC Form 5 (11/09) Agency(ies) Charge CHARGE OF DISCRIMINATION Charge Presented To: No(s): This form is affected by the Privacy Act of 1974. See enclosed Privacy Act **FEPA** Statement and other information before completing this form. **EEOC** 440-2021-02528 **ILLINOIS DEPARTMENT OF HUMAN RIGHTS** and EEOC State or local Agency, if any Name (indicate Mr., Ms., Mrs.) Home Phone Year of Birth MR. BRIAN POSTRELKO 1977 Street Address City, State and ZIP Code CHICAGO,IL Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.) No. Employees, Members Phone No. CHICAGO POLICE DEPARTMENT (312) 746-6000 501 +Street Address City, State and ZIP Code 3510 SOUTH MICHIGAN AVENUE, CHICAGO, IL 60653 Name No. Employees, Members Phone No. Street Address City, State and ZIP Code DISCRIMINATION BASED ON (Check appropriate box(es).) DATE(S) DISCRIMINATION TOOK PLACE **Earliest** Latest **RACE COLOR RELIGION** NATIONAL ORIGIN 01-29-2021 04-06-2021 RETALIATION AGE DISABILITY GENETIC INFORMATION **CONTINUING ACTION** OTHER (Specify) THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): I began my employment with Respondent on or about October 31, 2005. My current position is Police Officer. During my employment. I have been subjected to sexual harassment. I was also subjected to different terms and conditions of employment, including but not limited to, harsher work assignments. I complained to Respondent. I believe I have been discriminated against because of my sex, male, and in retaliation for engaging in a protected activity, in violation of Title VII of the Civil Rights Act of 1964, as amended. **DEPT. OF HUMAN RIGHTS** INTAKE DIVISION May 24, 2021 **RECEIVED** BY: NOTARY - When necessary for State and Local Agency Requirements I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures. I swear or affirm that I have read the above charge and that it I declare under penalty of perjury that the above is true and correct. is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT Digitally signed by Brian Postrelko on 05-12-2021 SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE 02:00 PM EDT (month, day, year)

CP Enclosure with EEOC Form 5 (11/09)

**PRIVACY ACT STATEMENT:** Under the Privacy Act of 1974, Pub. Law 93-579, authority to request personal data and its uses are:

- 1. FORM NUMBER/TITLE/DATE. EEOC Form 5, Charge of Discrimination (11/09).
- **2. AUTHORITY.** 42 U.S.C. 2000e-5(b), 29 U.S.C. 211, 29 U.S.C. 626, 42 U.S.C. 12117, 42 U.S.C. 2000ff-6.
- **3. PRINCIPAL PURPOSES.** The purposes of a charge, taken on this form or otherwise reduced to writing (whether later recorded on this form or not) are, as applicable under the EEOC anti-discrimination statutes (EEOC statutes), to preserve private suit rights under the EEOC statutes, to invoke the EEOC's jurisdiction and, where dual-filing or referral arrangements exist, to begin state or local proceedings.
- **4. ROUTINE USES.** This form is used to provide facts that may establish the existence of matters covered by the EEOC statutes (and as applicable, other federal, state or local laws). Information given will be used by staff to guide its mediation and investigation efforts and, as applicable, to determine, conciliate and litigate claims of unlawful discrimination. This form may be presented to or disclosed to other federal, state or local agencies as appropriate or necessary in carrying out EEOC's functions. A copy of this charge will ordinarily be sent to the respondent organization against which the charge is made.
- **5.** Whether Disclosure is Mandatory; Effect of Not Giving Information. Charges must be reduced to writing and should identify the charging and responding parties and the actions or policies complained of. Without a written charge, EEOC will ordinarily not act on the complaint. Charges under Title VII, the ADA or GINA must be sworn to or affirmed (either by using this form or by presenting a notarized statement or unsworn declaration under penalty of perjury); charges under the ADEA should ordinarily be signed. Charges may be clarified or amplified later by amendment. It is not mandatory that this form be used to make a charge.

#### NOTICE OF RIGHT TO REQUEST SUBSTANTIAL WEIGHT REVIEW

Charges filed at a state or local Fair Employment Practices Agency (FEPA) that dual-files charges with EEOC will ordinarily be handled first by the FEPA. Some charges filed at EEOC may also be first handled by a FEPA under worksharing agreements. You will be told which agency will handle your charge. When the FEPA is the first to handle the charge, it will notify you of its final resolution of the matter. Then, if you wish EEOC to give Substantial Weight Review to the FEPA's final findings, you must ask us in writing to do so within 15 days of your receipt of its findings. Otherwise, we will ordinarily adopt the FEPA's finding and close our file on the charge.

### **NOTICE OF NON-RETALIATION REQUIREMENTS**

Please **notify** EEOC or the state or local agency where you filed your charge **if retaliation is taken against you or others** who oppose discrimination or cooperate in any investigation or lawsuit concerning this charge. Under Section 704(a) of Title VII, Section 4(d) of the ADEA, Section 503(a) of the ADA and Section 207(f) of GINA, it is unlawful for an *employer* to discriminate against present or former employees or job applicants, for an *employment agency* to discriminate against anyone, or for a *union* to discriminate against its members or membership applicants, because they have opposed any practice made unlawful by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an

investigation, proceeding, or hearing under the laws. The Equal Pay Act has similar provisions and Section 503(b) of the ADA prohibits coercion, intimidation, threats or interference with anyone for exercising or enjoying, or aiding or encouraging others in their exercise or enjoyment of, rights under the Act.

	(3/98)	
	U.S. Equal Employment	Opportunity Commission
TO:	Illinois Department Of Human Rights 100 West Randolph Street Floor 10-100 Chicago, IL 60601	Date May 24, 2021 EEOC Charge No. 440-2021-02528 FEPA Charge No.
CHARGE TRA	ANSMITTAL	
SUBJECT:		
_	Brian Postrelko v.	CHICAGO POLICE DEPARTMENT
	Charging Party	Respondent
Transmitted he	erewith is a charge of employment discrimination initially rec	eived by the: on May 12, 2021
		ame of FEPA Date of Receipt
<b>X</b> Pursu	uant to the worksharing agreement, this charge is to be initia	lly investigated by the EEOC.
Pursu	uant to the worksharing agreement, this charge is to be initia	lly investigated by the FEPA.
The v	worksharing agreement does not determine which agency is	to initially investigate the charge.
	EEOC requests a waiver	FEPA waives
	No waiver requested	FEPA will investigate the charge initially
	Please complete the bottom portion of this fo and, where appropriate, to indicate whether t	
	and Title of EEOC or FEPA Official	Signature/Initials
	Julianne Bowman, District Director	Julianne Bowman/zb
	Brian Postrelko v.	Julianne Bowman/zb CHICAGO POLICE DEPARTMENT
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Case: 1:22-cv-00173 Document #: 1-1 Filed: 01/11/22 Page 46 of 127 PageID #:49



September 20, 2021

### Via Email Only: Pamela.Buscemi@cityofchicago.org

Pamela Buscemi, Paralegal II City of Chicago, Law Department Employment Litigation Division 2 North LaSalle Street, Suite 640 Chicago, IL 60602

RE: Freedom of Information Act Request ("FOIA"):

Brian Postrelko v. Chicago Police Department, EEOC Charge No. 440-2021-02528

Dear Ms. Buscemi:

On September 15, 2021, the Illinois Department of Human Rights ("Department") received your FOIA request in which you requested a copy of the above-referenced investigation file.

Section 2(c) of FOIA defines "public records" as including "all records, reports, forms, writings ... and all other documentary materials pertaining to the transaction of public business ... having been prepared by or for, or having been or being used by, received by, in possession of, or under the control of any public body." 5 ILCS 140/2(c).

The Department will provide you with a copy of the documentation it has in its possession related to the above-referenced matter. The Department's records show that on May 12, 2021, Brian Postrelko ("Mr. Postrelko"), filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"), against the Chicago Police Department, which was cross-filed with the Department. Further, the Department's records show that on May 24, 2021, the Department notified Mr. Postrelko, via U.S. mail, that to proceed with his charge before the Department he must notify the Department in writing within 30 days after receiving the EEOC's findings. However, the Department's records do not show that Mr. Postrelko notified the Department in writing of his intent to proceed before the Department. Therefore, the Department did not investigate Mr. Postrelko's allegations and is unable to provide you with a copy of the above-referenced investigation file. The documentation is attached hereto.

To the extent you consider this response to be a denial of your FOIA request, you have the right to submit a request for review by the Public Access Counselor ("PAC") of the Office of the Illinois Attorney General to: Public Access Counselor, Office of the Attorney General, 500 South 2<sup>nd</sup> Street, Springfield, Illinois 62706, Fax: 217-782-1396, E-mail: <a href="mailto:publicaccess@atg.state.il.us">publicaccess@atg.state.il.us</a>. If you choose to submit a request for review, you must do so within 60 days after the date of this response letter. The request for review must be in writing, signed by you, and include a copy of your FOIA request and this office's response. 5 ILCS 140/9.5(a). In addition, you have the right to seek judicial review of this response. 5 ILCS 140/11(a), (b).

Sincerely,

Keisha T. Nelson

Leisle J. Alon

Freedom of Information Act Officer

# IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION

FILED 10/1/2021 2:58 PM IRIS Y. MARTINEZ CIRCUIT CLERK COOK COUNTY, IL 2021 006834

BRIAN POSTRELKO,	)
Plaintiff,	)
v.	) 2021 L 006834
CITY OF CHICAGO, a Municipal Corporation, POLICE DEPARTMENT,	) Honorable Daniel J. Kubasiak
and officer CARRIE A. COONEY, individually, and as an agent and employee of the CITY OF CHICAGO,	) Commercial Calendar T )
Defendants.	)

### **DEFENDANT COONEY'S PARTIAL MOTION TO DISMISS PURSUANT TO 2-619.1**

Defendant, Carrie A. Cooney, through her attorney, CELIA MEZA, Corporation Counsel for the City of Chicago, moves to dismiss Count IV and VI of Plaintiff's Complaint pursuant to 735 ILCS 5/2-619.1. Defendant states the following in support of her motion.

#### I. Introduction

Sgt. Carrie A. Cooney was Plaintiff's supervisor in the Chicago Police Department for approximately three months in early 2021. Plaintiff alleges she sexually harassed him in violation of the Illinois Human Rights Act, 775 ILCS 5/2-102(D) ("IHRA") (Count IV), engaged in unwanted touching of him that constituted battery (Count V) and engaged in "sexual advances" and "impermissible touching" that constituted an intentionally infliction of emotional distress ("IIED") (Count VI). The Court should dismiss Plaintiff's IHRA claim (Count IV) for failure to exhaust under Section 2-619. Additionally, Plaintiff fails to state a claim for IIED because the conducted described is not "extreme and outrageous," and Plaintiff has failed to plead any facts to show his emotional distress was "severe." Therefore, the Court should dismiss Count VI under 2-615.

## II. Background

Plaintiff is a Police Officer with the Chicago Police Department (CPD). Plaintiff alleges that between January and March 2021, his then-supervisor, Defendant Sgt. Carrie Cooney, sexually harassed him. Plaintiff alleges Sgt. Cooney's purported harassment took the following forms:

- Inappropriate unwanted sexual comments and advances towards Plaintiff, (Complaint ("Comp.") (attached as "Exhibit 1" or "Ex. 1") at ¶¶4, 5);
- Taking a picture of Plaintiff's buttocks without consent, (id. at ¶5);
- Pulling Plaintiff by his backpack without consent, (id.);
- Touching Plaintiff's back and neck without his consent, (id.);
- "Graz[ing] up against [Plaintiff's] buttocks and back without his consent," (id.);
- Grabbing and fixing Plaintiff's shirt collar without his consent, (id.);
- Violating social distancing protocols, (id.).

Plaintiff also concludes that Defendant Cooney retaliated against him but does not specify what form the alleged retaliation took. (*Id.*) Plaintiff also alleges that Defendant Cooney "sexually discriminated" against him but fails to allege how. (*Id.*)

In Count IV of the Complaint, Plaintiff alleges Cooney, violated the IHRA's prohibition on sexual harassment. (*Id.* at ¶ 58).

In Count V of the Complaint, Plaintiff alleges that the purported unwanted touching outlined in paragraph 5 of the Complaint constituted battery. (*Id.* at ¶ 73).

In Count VI of the Complaint, Plaintiff alleges the purported "inappropriate sexual advances and impermissible touching of the Plaintiff as set forth in Paragraph 5 [of the Complaint]" constituted IIED in violation of Illinois common law. (*Id.* at ¶¶ 85-86).

On May 12, 2021, Plaintiff cross-filed a charge of discrimination with the U.S. Equal Employment Opportunity Commission ("EEOC") and the Illinois Department of Human Rights ("IDHR"). (Charge of Discrimination, Ex. 1-A). Pursuant to the cooperative agreement between the EEOC and IDHR, the EEOC conducted the initial investigation of Plaintiff's charge. (A copy of

the EEOC May 24, 2021 letter to the IDHR indicating the EEOC would conduct the initial investigation is part of the IDHR file attached hereto as "Exhibit 2" or "Ex. 2" at p. 5).

On May 24, 2021, the IDHR sent Plaintiff a letter notifying him that the IDHR would take no further action on Plaintiff's IDHR charge unless Plaintiff requested the IDHR do so after the EEOC issued its findings. (Ex. 2, p. 1). The IDHR's letter to Plaintiff stated, in relevant part:

Since you filed your discrimination charge initially with the EEOC, the EEOC is the governmental agency responsible for investigating the charge and the investigation will be conducted pursuant to the rules and procedures adopted by the EEOC. The Department will take no action on your charge until the EEOC issues its findings.

After the EEOC issues its findings, if you want the Department to take any further action on your charge, you must send the Department a copy of the EEOC's findings within 30 days after service of the EEOC's findings on you.

If you received the EEOC's findings prior to receipt of this letter, you have 30 days from the date of this letter to send the Department a copy of the EEOC's findings. Upon receipt of the EEOC's findings, the Department will mail you a notice as to what further action the Department may take on your charge. . . .

Your failure to timely provide the EEOC's findings to the Department will result only in the Department closing your file. . . . If you do not wish to proceed with the Department, you do not need to take any further action.

Id. The EEOC issued its findings to Plaintiff on May 24, 2021. (Ex. 1-B). Per the IDHR, Plaintiff never submitted the EEOC filings to the IDHR: "the [IDHR]'s records do not show that [Plaintiff] notified the Department in writing of his intent to proceed before the Department. Therefore, the Department did not investigate [Plaintiff's] allegations . . . ." (September 20, 2021 Letter from the IDHR, "Exhibit 3" or "Ex. 3"). The IDHR never issued Plaintiff a right to sue letter. (See Ex. 2 (entire IDHR file received via FOIA) and Ex. 3 (letter from the IDHR explaining charge was not investigated). Plaintiff filed suit on July 6, 2021.

## III. Legal Standard

A motion to dismiss pursuant to 735 ILCS 5/2-619 admits the sufficiency of all well-pleaded facts but argues for the dismissal of the complaint based on an affirmative matter defeating the claim

or avoiding its legal effect. *Janda v. United States Cellular Corp.*, 2011 IL App (1st) 103552, ¶ 83. A motion brought pursuant to section 2-619(a)(1) asserts "the court does not have jurisdiction of the subject matter of the action . . . ." 735 ILCS 5/2-619(a)(1). A motion brought pursuant to 2-619(a)(9) asserts "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9).

On the other hand, a motion to dismiss pursuant to 735 ILCS 5/2-615 tests the legal sufficiency of the complaint based on defects apparent on its face. Reynolds v. Jimmy John's Enterprises, LLC, 2013 IL App (4th) 120139, ¶ 25. A court on a Section 2-615 motion views the facts pled in the light most favorable to the plaintiff and determines if they are sufficient to state a cause of action upon which relief might be granted. Id. "[A] cause of action should not be dismissed pursuant to Section 2-615 unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery." Id.

## IV. Argument

#### Motion Pursuant to Section 2-619

A. Plaintiff's IHRA claim against the Cooney (Count IV) should be dismissed as Plaintiff failed to administratively exhaust his complaint with the IDHR.

Defendant Cooney hereby incorporates and adopts the reasons in Section IV.A. of the City's Motion to Dismiss. (pp. 5-6). For the reasons set forth in the City's Motion, the Court should dismiss Count IV against Cooney.

#### Motion Pursuant to 2-615

B. Plaintiff's IIED claim should be dismissed pursuant to 2-615.

In order to state a cause of action for IIED, a plaintiff must adequately allege: "(1) the defendant's conduct was extreme and outrageous; (2) the defendant either intended to inflict severe emotional distress or knew that there was a high probability that its conduct would do so; and (3) the defendant's conduct actually caused severe emotional distress." Welsh v. Commonwealth Edison

Co., 306 Ill. App. 3d 148, 154 (1st Dist. 1999). As explained in the following sections, Plaintiff fails to meet all three prongs.

1. Plaintiff does not allege facts showing Cooney's conduct was objectively extreme and outrageous and cannot show Cooney intended to inflict distress or knew there was a high probability that her alleged conduct would do so.

Whether conduct is extreme and outrageous is evaluated on an objective standard based on all of the facts and circumstances. *McGrath v. Fahey,* 126 Ill.2d 78, 90 (1988). The Illinois Supreme Court has indicated that "mere insults, indignities, threats, annoyances, petty oppressions or trivialities" do not constitute extreme and outrageous conduct. *Public Finance Corp. v. Davis*, 66 Ill.2d 85, 89-90 (1976). "Rather, the nature of the defendant's conduct must be so extreme as to go beyond all possible bounds of decency, and to be regarded as intolerable in a civilized community." *Kolegas v. Heftel Broadcasting Corp.*, 154 Ill. 2d 1, 21 (1992). In determining whether conduct is outrageous and extreme, the court uses an objective standard based on all the facts and circumstances of the case. *Duffy v. Orlan Brook Condominium Owners' Ass'n*, 2012 IL (1st) 113577, ¶ 36. Here, the conduct alleged, including pulling Plaintiff's backpack, "grazing upon his buttocks," taking a picture of his buttocks and fixing his shirt collar, are not extreme and outrageous to go beyond the bounds of human decency. Ex. 1, ¶5.

In *Welsh*, plaintiffs alleged that they were demoted, transferred, forced to perform "demeaning" and "humiliating" tasks, harassed, intimidated, and threatened with termination by their employer. 306 Ill. App. 3d at 154. The court ruled that "in the absence of conduct calculated to coerce an employee to do something illegal" an employer's retaliatory conduct is not enough to give rise to and IIED claim. *Id.* The court noted that if stress and anxiety resulting from discipline, job transfers and terminations was enough for an action for IIED, then "virtually" every employee would have a cause of action. *Id.* Here, Plaintiff is not even alleging actions such as demotions or

terminations or threats from Cooney. Thus, the alleged actions do not rise to the level of extreme and outrageous conduct.

Additionally, the Illinois Appellate Court has found that allegations objectively worse than those found in the instant case do not rise to the level of extreme and outrageous conduct. In *Miller* v. *Equitable Life Assur. Soc. of the U.S.*, 181 Ill. App. 3d 954, 956 (1st Dist. 1989), the plaintiff, an insurance sales representative, was subjected to repeated threats of physical harm, continuous threats of termination, denial of job transfers, and she was prohibited from seeking police assistance when a colleague hit her and threw coffee at her. 129 Ill. App. 3d at 955-56. Additionally, her employer refused to forward her mail to her and falsely told her clients she no longer worked there while she was out recovering from a car crash. *Id.* at 956. Her supervisors repeatedly told her to use sex to make insurance sales. *Id.* One supervisor touched her breast, shoulders and head. *Id.* Another told her that he "wanted her." *Id.* Finally, she alleged she was fired in retaliation for reporting a fraudulent insurance application and for reporting illegal kickbacks. *Id.* 

The circuit court dismissed the Plaintiff's complaint for failure to state a cause of action, holding that the plaintiff could not recover for IIED as the conduct was not extreme and outrageous as a matter of law. The First District affirmed, holding:

for approximately three and one-half years [the plaintiff] was surrounded by supervisors and co-workers who were inconsiderate, rude, vulgar, uncooperative, unprofessional and unfair. While we do not condone such behavior, we do not believe that the conduct alleged is so outrageous in character and so extreme in degree as to go beyond all bounds of human decency. The fact that [the plaintiff] alleges that she was a victim of sexual harassment, battery, and retaliatory discharge does not necessarily mean that she has a cause of action for intentional infliction of emotional distress.

Id. at 957.

Here, the alleged acts took place over less than a three-month period, nowhere near 3.5 years the plaintiff in *Miller* endured. Ex. 1, ¶5. Additionally, the conduct alleged in *Miller* was more extreme than the conduct alleged here: grabbing Plaintiff's backpack, fixing Plaintiff's collar, taking a picture

of his buttocks, "[g]raz[ing] up against [Plaintiff's] buttocks and back without his consent," and making unspecified "advances" towards him. As the more severe conduct in *Miller* could not state a claim for IIED, the Court should similarly find Plaintiff's allegations here insufficient to state a claim for IIED.

It is axiomatic that if the alleged conduct is not severe and outrageous, then Plaintiff cannot meet the second prong, that "the defendant either intended to inflict severe emotional distress or knew that there was a high probability that its conduct would do so." *Welsh*, 306 Ill. App. 3d at 154. Thus, Plaintiff has failed to establish the first and second prongs for IIED and Count VI should be dismissed.

# 2. Plaintiff has not sufficiently plead that he experienced severe emotional distress.

Plaintiff has included only a conclusory allegation that the emotional distress he suffered was "severe" without alleging any facts in support. Emotional distress alone is not sufficient to give rise to a cause of action for IIED. *Taliani v. Ressurection*, 2018 IL App (3d) 160327, ¶ 27. To be actionable, the distress inflicted must be so severe that no reasonable person could be expected to endure it. *Id.* Here, plaintiff conclusory claimed, without elaboration, that he suffered "severe emotional distress". Ex. 1, ¶ 87. *See Obolumani v. Young*, 2015 Il App (1st) 141930-U, p 47 (granting 615 motion because the plaintiff did not allege facts to show distress "so severe or long lasting that no reasonable man could be expected to endure it" when plaintiff only pled he had sleepless nights, cried and withdrew from his family; *see also*, Thompson v. N.J., 2016 Il App (1st) 142918, ¶28 ("Illinois is a fact pleading state; conclusions of law and conclusory allegations unsupported by specific facts are not sufficient to survive dismissal"). Thus, Plaintiff has not sufficiently pled a cause of action for IIED, and this Court should dismiss his claim pursuant to 2-615.

### V. Conclusion

For these reasons, the Court should dismiss Counts IV and VI of Plaintiff's Complaint.

Dated: October 1, 2021

Respectfully submitted,

CELIA MEZA

Corporation Counsel of the City of Chicago

Attorney No.: 90909 City of Chicago, Department of Law Employment Litigation Division 2 North LaSalle Street, Suite 640 Chicago, Illinois 60602 Jessica.Durkin@cityofchicago.org (312) 744-2836

Counsel for Defendant Carrie A. Cooney

By: <u>s/ Jessica R. Durkin</u> JESSICA R. DURKIN

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BRIAN POSTRELKO	)		13927423 FILED
Plaintiff,	)		10/1/2021 2:58 PM IRIS Y. MARTINEZ CIRCUIT CLERK
Vs.	)	No.: 2021L006834	COOK COUNTY, IL 2021L006834
CITY OF CHICAGO, a Municipal	)		
Corporation, POLICE DEPARTMENT,	)		
and officer CARRIE A. COONEY,	)		
individually, and as an agent and	)		
employee of the CITY OF CHICAGO,	)		
	)		
Defendants.	)		

### **COMPLAINT AT LAW**

NOW COMES the Plaintiff, BRIAN POSTRELKO, by and through his attorneys, CUDA LAW OFFICES, LTD., and complaining of the Defendants, CITY OF CHICAGO, a Municipal Corporation, POLICE DEPARTMENT and officer CARRIE A. COONEY, individually and as an agent and employee of the CITY OF CHICAGO, states as follows:

## COUNT I – VIOLATION OF HUMAN RIGHTS ACT BRIAN POSTRELKO vs CITY OF CHICAGO

- 1) Defendant, CITY OF CHICAGO, a Municipal Corporation, (hereinafter "CITY OF CHICAGO"), was and still is a duly organized and existing corporation in and about the City of Chicago, County of Cook and State of Illinois.
- 2) At all times relevant to this Complaint, Defendant, CARRIE A. COONEY, individually, was a police officer and agent and employee of Defendant, CITY OF CHICAGO.
- 3) On or about January 4, 2021, Plaintiff, BRIAN POSTRELKO, was offered a position with the CITY OF CHICAGO, which was at their Headquarters and within the Awards Department.



- 4) Throughout the course of BRIAN POSTRELKO'S employment with the CITY OF CHICAGO between January 2021, and March 2021, the Defendant, CARRIE A. COONEY, as an agent and employee of Defendant, CITY OF CHICAGO, on several occasions, made inappropriate comments and advances towards BRIAN POSTRELKO.
- 5) During these encounters Defendant CARRIE A. COONEY as agent and employee of Defendant, CITY OF CHICAGO:
  - Took an unconsented and inappropriate picture of BRIAN POSTRELKO's buttocks;
  - b. Pulled BRIAN POSTRELKO by his backpack without his consent;
  - c. Touched BRIAN POSTRELKO on his back and neck without his consent;
  - d. Grazed up against BRIAN POSTRELKO's buttocks and back without his consent;
  - e. Grabbed and fixed BRIAN POSTRELKO's shirt collar without his consent;
  - f. Violated social distancing protocols;
  - Made inappropriate and unwanted sexual comments towards BRIAN POSTRELKO;
  - h. Sexually harassed BRIAN POSTRELKO;
  - i. Retaliated against BRIAN POSTRELKO for denying her inappropriate and unwanted advances;
  - j. Sexually discriminated against BRIAN POSTRELKO on the basis of his sex.
- 6) During the course of these encounters, Defendant CITY OF CHICAGO, knew or should have known about the inappropriate conduct directed at BRIAN POSTRELKO and failed to take appropriate action.



- 7) On each occasion during which the Defendant CARRIE A. COONEY made the foregoing inappropriate and sexually related overtures, BRIAN POSTRELKO, informed the Defendant that he objected to the advances, behavior and comments.
- 8) For purposes of this Complaint, CITY OF CHICAGO, was at all times herein Plaintiff's employer as contemplated by 775 ILCS 5/2-101(B)(1)(b).
- 9) At all times relevant, Plaintiff was an employee of, CITY OF CHICAGO, as contemplated by 775 ILCS 5/2-101(A)(1).
- 10) For purposes of this Complaint, Defendant, CARRIE A. COONEY, was a managerial employee and agent of Defendant CITY OF CHICAGO, as contemplated by 775 ILCS 5/2-102(D) and at all times relevant to this Complaint had managerial and supervisory authority over BRIAN POSTRELKO in his capacity as an employee of Defendant, CITY OF CHICAGO.
- 11) As a managerial and supervisory employee and agent of Defendant CITY OF CHICAGO, Defendant CARRIE A. COONEY engaged in the foregoing conduct set forth in Paragraphs 5.
- 12) This action is brought pursuant to Article II of the Illinois Human Rights Act [775 ILCS 5/2-101 et seq.].
- 13) The forgoing acts perpetrated against BRIAN POSTRELKO by the Defendant CARRIE A. COONEY constituted acts of sexual harassment, in violation of 775 ILCS 5/2-102(D).
- 14) Within 180 days of the forgoing acts of sexual harassment, BRIAN POSTRELKO brought a Charge of Discrimination against the Defendant CITY OF CHICAGO, before the



Illinois Department of Human Rights (hereinafter "the Department"), as contemplated by 775 ILCS 5/7A-102. A copy of said Charge of Discrimination is attached hereto as Exhibit A.

- 15) BRIAN POSTRELKO received his Notice of Rights letter from the EEOC on May 24, 2021. A copy of said Notice of Rights letter is attached hereto as Exhibit B.
- As a result of the foregoing acts of sexual harassment perpetrated against him by the Defendant CARRIE A. COONEY, who was at the time acting as an agent of Defendant, CITY OF CHICAGO, and having managerial authority over BRIAN POSTRELKO, Plaintiff suffered severe and permanent emotional distress and psychological suffering and has suffered economic losses, which are a direct and proximate result of the foregoing harassment.
- 17) The acts of the Defendants were so outrageous as to warrant imposition of punitive damages authorized by the Illinois Human Rights Act in order to deter other employers from similar acts.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the Plaintiff and against the Defendant, CITY OF CHICAGO, for actual and punitive damages in an amount in excess of \$50,000.00.

# COUNT II – BATTERY BRIAN POSTRELKO vs CITY OF CHICAGO

- 18-28) Plaintiff, BRIAN POSTRELKO, adopts and realleges each and every allegation of Paragraphs 1 through 11 of Count I above as and for Paragraphs 18-28 of Count II of his Complaint as though fully set forth herein.
- 29) Between January 2021, and March 2021, Defendant CARRIE A. COONEY, as agent and employee of Defendant, CITY OF CHICAGO, without the consent of BRIAN POSTRELKO, made offensive physical contact with Plaintiff, causing him apprehension for his personal safety.

- 30) Contact with BRIAN POSTRELKO as set forth in Paragraph 5, constituted impermissible touching and battery perpetrated against BRIAN POSTRELKO.
- 31) As a direct and proximate result of the acts of battery perpetrated against him by Defendant CARRIE A. COONEY, as agent and employee of Defendant CITY OF CHICAGO, BRIAN POSTRELKO has suffered humiliation, shame and emotional distress.
- 32) The conduct of Defendant CARRIE A. COONEY, as agent and employee of Defendant CITY OF CHICAGO, is so outrageous as to warrant an award of punitive damages to deter others from similar conduct as authorized and contemplated by the Illinois Human Rights Act.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the Plaintiff and against the Defendant, CARRIE A. COONEY, for actual and punitive damages in an amount in excess of \$50,000.00.

# COUNT III – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS BRIAN POSTRELKO vs CITY OF CHICAGO

- 33-43) Plaintiff, BRIAN POSTRELKO, adopts and realleges each and every allegation of Paragraphs 1 through 11 of Count I above as and for Paragraphs 33-43 of Count III of his Complaint as though fully set forth herein.
- 44) The inappropriate sexual advances and impermissible touching of the Plaintiff as set forth in Paragraph 5 hereof were willful and deliberate and were of such a character that any reasonable person would know they would cause the Plaintiff, BRIAN POSTRELKO, to suffer emotional distress.
- 45) That in so acting, the Defendant CARRIE A. COONEY, as agent and employee of Defendant, CITY OF CHICAGO, intentionally inflicted emotional distress upon BRIAN POSTRELKO.



As a result of the conduct of the Defendant CARRIE A. COONEY, as agent and employee of Defendant CITY OF CHICAGO, as expressed in Paragraph 5 hereof, BRIAN POSTRELKO was caused to suffer severe and permanent emotional distress.

47) The conduct of the Defendant CARRIE A. COONEY, as agent and employee of Defendant CITY OF CHICAGO, was so outrageous as to warrant an award of punitive damages to deter others from similar conduct as authorized and contemplated by the Illinois Human Rights Act.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the Plaintiff and against the Defendant, CITY OF CHICAGO, for actual and punitive damages in an amount in excess of \$50,000.00.

## COUNT IV - VIOLATION OF HUMAN RIGHTS ACT BRIAN POSTRELKO vs CARRIE A. COONEY, Individually

- 48) At all times relevant to this Complaint, Defendant CARRIE A. COONEY, individually was a police officer and agent and employee of Defendant, CITY OF CHICAGO.
- 49) On or about January 4, 2021, Plaintiff BRIAN POSTRELKO was offered a position with the CITY OF CHICAGO.
- 50) Throughout the course of BRIAN POSTRELKO'S employment with the CITY OF CHICAGO between January 2021, and March 2021, the Defendant, CARRIE A. COONEY, as an agent and employee of Defendant, CITY OF CHICAGO, on several occasions, made inappropriate comments and advances towards BRIAN POSTRELKO.
  - 51) During these encounters Defendant CARRIE A. COONEY, individually:
    - Took an unconsented and inappropriate picture of BRIAN POSTRELKO's buttocks;
    - b. Pulled BRIAN POSTRELKO by his backpack without his consent;



- c. Touched BRIAN POSTRELKO on his back and neck without his consent;
- d. Grazed up against BRIAN POSTRELKO's buttocks and back without his consent;
- e. Grabbed and fixed BRIAN POSTRELKO's shirt collar without his consent;
- f. Violated social distancing protocols;
- Made inappropriate and unwanted sexual comments towards BRIAN POSTRELKO;
- h. Sexually harassed BRIAN POSTRELKO;
- i. Retaliated against BRIAN POSTRELKO for denying her inappropriate and unwanted advances; and
- j. Sexually discriminated against BRIAN POSTRELKO on the basis of his sex.
- 52) On each occasion during which the Defendant CARRIE A. COONEY made the foregoing inappropriate and sexually related overtures, BRIAN POSTRELKO informed the Defendant that he objected to the advances, behavior and comments.
- 53) For purposes of this Complaint, CITY OF CHICAGO, was at all times herein Plaintiff's employer as contemplated by 775 ILCS 5/2-101(B)(1)(b).
- 54) At all times relevant, Plaintiff was an employee of, CITY OF CHICAGO, as contemplated by 775 ILCS 5/2-101(A)(1).
- 55) For purposes of this Complaint, Defendant, CARRIE A. COONEY, was a managerial employee and agent of Defendant CITY OF CHICAGO, as contemplated by 775 ILCS 5/2-102(D) and at all times relevant to this Complaint had managerial and supervisory authority over BRIAN POSTRELKO in his capacity as an employee of Defendant, CITY OF CHICAGO.



- 56) As a managerial and supervisory employee and agent of Defendant CITY OF CHICAGO, Defendant CARRIE A. COONEY engaged in the foregoing conduct set forth in Paragraph 5.
- 57) This action is brought pursuant to Article II of the Illinois Human Rights Act [775 ILCS 5/2-101 et seq.].
- The forgoing acts perpetrated against BRIAN POSTRELKO by the Defendant CARRIE A. COONEY constituted acts of sexual harassment, in violation of 775 ILCS 5/2-102(D).
- 59) Within 180 days of the forgoing acts of sexual harassment, BRIAN POSTRELKO brought a Charge of Discrimination against the Defendant CITY OF CHICAGO, before the Illinois Department of Human Rights (hereinafter "the Department"), as contemplated by 775 ILCS 5/7A-102. A copy of said Charge of Discrimination is attached hereto as Exhibit A.
- 60) BRIAN POSTRELKO received his Notice of Rights letter from the EEOC on May 24, 2021. A copy of said Notice of Rights letter is attached hereto as Exhibit B.
- As a result of the foregoing acts of sexual harassment perpetrated against him by the Defendant CARRIE A. COONEY, individually, who at that time had managerial authority over BRIAN POSTRELKO, Plaintiff suffered severe and permanent emotional distress and psychological suffering and has suffered economic losses, which are a direct and proximate result of the foregoing harassment.
- 62) The acts of the Defendants were so outrageous as to warrant imposition of punitive damages authorized by the Illinois Human Rights Act in order to deter other employers from similar acts.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the



Plaintiff and against the Defendant, CARRIE A. COONEY, individually, for actual and punitive damages in an amount in excess of \$50,000.00.

# COUNT V – BATTERY BRIAN POSTRELKO vs CARRIE A. COONEY, Individually

- 63-71) Plaintiff, BRIAN POSTRELKO, adopts and realleges each and every allegation of Paragraphs 48 through 56 of Count IV above as and for Paragraphs 63-71 of Count V of his Complaint as though fully set forth herein.
- 72) Between January 2021, and March 2021, Defendant CARRIE A. COONEY, individually, without the consent of BRIAN POSTRELKO, made offensive physical contact with Plaintiff, causing him apprehension for his personal safety.
- 73) Contact with BRIAN POSTRELKO as set forth in Paragraph 5, constituted impermissible touching and battery perpetrated against BRIAN POSTRELKO.
- 74) As a direct and proximate result of the acts of battery perpetrated against him by Defendant CARRIE A. COONEY, individually, Plaintiff BRIAN POSTRELKO has suffered humiliation, shame and emotional distress.
- 75) The conduct of Defendant CARRIE A. COONEY, individually, is so outrageous as to warrant an award of punitive damages to deter others from similar conduct as authorized and contemplated by the Illinois Human Rights Act.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the Plaintiff and against the Defendant, CARRIE A. COONEY, individually, for actual and punitive damages in an amount in excess of \$50,000.00.

# COUNT VI – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS BRIAN POSTRELKO vs CARRIE A. COONEY, Individually



76-84) Plaintiff, BRIAN POSTRELKO, adopts and realleges each and every allegation of Paragraphs 48 through 56 of Count IV above as and for Paragraphs 76-84 of Count VI of his Complaint as though fully set forth herein.

- 85) The inappropriate sexual advances and impermissible touching of the Plaintiff as set forth in Paragraph 5 hereof were willful and deliberate and were of such a character that any reasonable person would know they would cause the Plaintiff, BRIAN POSTRELKO, to suffer emotional distress.
- 86) That in so acting, the Defendant CARRIE A. COONEY, individually, intentionally inflicted emotional distress upon BRIAN POSTRELKO.
- As a result of the conduct of the Defendant CARRIE A. COONEY, individually, as expressed in Paragraph 5 hereof, Plaintiff BRIAN POSTRELKO was caused to suffer severe and permanent emotional distress.
- 88) The conduct of the Defendant CARRIE A. COONEY, individually, was so outrageous as to warrant an award of punitive damages to deter others from similar conduct as authorized and contemplated by the Illinois Human Rights Act.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the Plaintiff and against the Defendant, CARRIE A. COONEY, individually, for actual and punitive damages in an amount in excess of \$50,000.00.

Respectfully submitted

By:

Anthony Cuda
Attorney for Plaintiff

Attorney No: 27099 CUDA LAW OFFICES, LTD. 6525 W. North Avenue, Suite 204 Oak Park, Illinois 60302

Cak I alk, Illinois (

708-383-4900



\*210524.012 9 4

EEOC Form 5 (11/09)

# CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act
Statement and other information before completing this form.

Charge Presented To:

FEPA

**EEOC** 

Agency (1897 chards PM No(s)RIS Y. MARTINEZ CIRCUIT CLERK COOK COUNTY IL 4407212366834528

### **ILLINOIS DEPARTMENT OF HUMAN RIGHTS**

13927429nd EEOC

State or local Agency, if any
Name (indicate Mr., Ms., Mrs.)

Home Phone

Year of Birth

MR. BRIAN POSTRELKO

(773) 972-7009

1977

Street Address

City, State and ZIP Code

### 7061 NORTH KEDZIE AVENUE, STE 1713, CHICAGO,IL 60645

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Street Address

Name

Phone No. (312) 746-6000

CHICAGO POLICE DEPARTMENT

City, State and ZIP Code

## 3510 SOUTH MICHIGAN AVENUE, CHICAGO, IL 60653

22. 22.

No. Employees, Members

501+

No. Employees, Members

Phone No.

Street Address

City. State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

RACE

COLOR

X SEX

RELIGION

NATIONAL ORIGIN

Earliest **01-29-2021** 

Latest **04-06-2021** 

X RETALIATION OTHER (Specify)

AGE

DIŞABILITY

GENETIC INFORMATION

DATE(S) DISCRIMINATION TOOK PLACE

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I began my employment with Respondent on or about October 31, 2005. My current position is Police Officer. During my employment, I have been subjected to sexual harassment. I was also subjected to different terms and conditions of employment, including but not limited to, harsher work assignments. I complained to Respondent.

I believe I have been discriminated against because of my sex, male, and in retaliation for engaging in a protected activity, in violation of Title VII of the Civil Rights Act of 1964, as amended.

DEPT. OF HUMAN RIGHTS

DEPT. OF HUMAN RIGHTS
INTAKE DIVISION

May 24, 2021

RECEIVED

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

Digitally signed by Brian Postrelko on 05-12-2021 02:00 PM EDT NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)

BY:

EXHIBIT



FEOC Form 161 (11/2020)

#### U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

0 0 8 8 9 9 4 \*

DISMISSAL	AND NOTICE	OF RIGHTS
PIONIOGAL	VIAD LAGINGE	OI INDIIIO

From: To: Brian Postrelko **Chicago District Office** 7061 North Kedzie Avenue 230 S. Dearborn **Suite 1866 STE 1713** Chicago, IL 60604 Chicago, IL 60645 On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a)) EEOC Charge No **EEOC Representative** Telephone No. Katarzyna Hammond, 440-2021-02528 Investigator (312) 872-9703 THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON: The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC. Your allegations did not involve a disability as defined by the Americans With Disabilities Act. The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged

The EEOC issues the following determination: The EEOC will not proceed further with its investigation, and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge. The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

#### - NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission

Julianne Bowman/eh

5/24/2021

Enclosures(s)

X

Julianne Bowman, **District Director** 

(Date Issued)

CC:

CITY OF CHICAGO LAW DEPARTMENT LABOR

DIVISION

Eileen Geary, Esq.

**Chief Assistant Corporation Counsel** 2 North LaSalle Street, Suite 660

discrimination to file your charge

Other (briefly state)

Chicago, IL 60602



Case: 1:22-cv-00173 Document #: 1-1 Filed: 01/11/22 Page 67 of 127 PageID #:70



May 24, 2021

Brian Postrelko

Chicago, IL

Re: Brian Postrelko v. Chicago Police Department #210524.012

#### Dear Complainant:

You are receiving this letter because you filed a charge with the United States Equal Employment Opportunity Commission (EEOC). The EEOC and the Illinois Department of Human Rights (Department) are parties to a cooperative agreement. Under this agreement, when you filed your charge of discrimination with the EEOC, a copy of the charge was automatically filed with the Department. The Department is keeping a copy of your EEOC charge on file to preserve jurisdiction under Illinois law.

Since you filed your discrimination charge initially with the EEOC, the EEOC is the governmental agency responsible for investigating the charge and the investigation will be conducted pursuant to the rules and procedures adopted by the EEOC. The Department will take no action on your charge until the EEOC issues its findings. After the EEOC issues its findings, if you want the Department to take any further action on your charge, you must send the Department a copy of the EEOC's findings within 30 days after service of the EEOC's findings on you. Please also send a one sentence written statement requesting that the Department investigate your charge and include the above Control Number. You may submit a copy of the EEOC's findings by either of the following methods:

**By Mail:** Send your EEOC findings and written statement via U.S. Postal certified mail, return receipt requested, to: Illinois Department of Human Rights, Attn: EEOC Referred Charges/Intake Unit, 100 W. Randolph St., Ste. 10-100, Chicago, IL 60601.

**In Person:** Bring an original and one copy of your EEOC findings and written statement to the Department. The Department will stamp and return the copies to you for your records.

If you received the EEOC's findings prior to receipt of this letter, you have 30 days from the date of this letter to send the Department a copy of the EEOC's findings. Upon receipt of the EEOC's findings, the Department will mail you a notice as to what further action the Department may take on your charge.

The 365-day time period for the Department to investigate your EEOC charge is tolled while the EEOC is investigating your charge and does not begin to run until the EEOC issues its findings. Your failure to timely provide the EEOC's findings to the Department will result only in the Department closing your file. This process does not affect the investigation of your charge at EEOC. If you do not wish to proceed with the Department, you do not need to take any further action.

This letter does not apply to any settlement of this charge the parties have made with the EEOC.

If you have any questions, please contact Thomas F. Roeser, Pre-Investigations Coordinator, at (312) 814-6295. Please do not contact the EEOC.

ILLINOIS DEPARTMENT OF HUMAN RIGHTS.

PRE1-EEOC 30 Rev 8/18

100 West Randolph Street, Suite 10-100, Chicago, IL 60601, (312) 814-6200, TTY (866) 740-3953, Housing Line (800) 662-3942 2309 West Jefferson Street, Springfield, IL 62702, (217) 785-5100 2309 West Main Street, Marion, IL 62959 (618) 993-7463 www.illinois.gov/dhr

CC: Chicago Police Department, C/O Eileen Geary 2 N. LaSalle St., Suite 660 Chicago, IL 60602 Case: 1:22-cv-00173 Document #: 1-1 Filed: 01/11/22 Page 68 of 127 PageID #:71

EEOC Form 5 (11/09) Agency(ies) Charge CHARGE OF DISCRIMINATION Charge Presented To: No(s): This form is affected by the Privacy Act of 1974. See enclosed Privacy Act **FEPA** Statement and other information before completing this form. **EEOC** 440-2021-02528 **ILLINOIS DEPARTMENT OF HUMAN RIGHTS** and EEOC State or local Agency, if any Name (indicate Mr., Ms., Mrs.) Home Phone Year of Birth MR. BRIAN POSTRELKO 1977 Street Address City, State and ZIP Code CHICAGO,IL Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.) No. Employees, Members Phone No. CHICAGO POLICE DEPARTMENT (312) 746-6000 501 +Street Address City, State and ZIP Code 3510 SOUTH MICHIGAN AVENUE, CHICAGO, IL 60653 Name No. Employees, Members Phone No. Street Address City, State and ZIP Code DISCRIMINATION BASED ON (Check appropriate box(es).) DATE(S) DISCRIMINATION TOOK PLACE **Earliest** Latest **RACE** COLOR **RELIGION** NATIONAL ORIGIN 01-29-2021 04-06-2021 RETALIATION AGE DISABILITY GENETIC INFORMATION **CONTINUING ACTION** OTHER (Specify) THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): I began my employment with Respondent on or about October 31, 2005. My current position is Police Officer. During my employment. I have been subjected to sexual harassment. I was also subjected to different terms and conditions of employment, including but not limited to, harsher work assignments. I complained to Respondent. I believe I have been discriminated against because of my sex, male, and in retaliation for engaging in a protected activity, in violation of Title VII of the Civil Rights Act of 1964, as amended. **DEPT. OF HUMAN RIGHTS** INTAKE DIVISION May 24, 2021 **RECEIVED** BY: NOTARY - When necessary for State and Local Agency Requirements I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures. I swear or affirm that I have read the above charge and that it I declare under penalty of perjury that the above is true and correct. is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT Digitally signed by Brian Postrelko on 05-12-2021 SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE 02:00 PM EDT

(month, day, year)

CP Enclosure with EEOC Form 5 (11/09)

**PRIVACY ACT STATEMENT:** Under the Privacy Act of 1974, Pub. Law 93-579, authority to request personal data and its uses are:

- 1. FORM NUMBER/TITLE/DATE. EEOC Form 5, Charge of Discrimination (11/09).
- **2. AUTHORITY.** 42 U.S.C. 2000e-5(b), 29 U.S.C. 211, 29 U.S.C. 626, 42 U.S.C. 12117, 42 U.S.C. 2000ff-6.
- **3. PRINCIPAL PURPOSES.** The purposes of a charge, taken on this form or otherwise reduced to writing (whether later recorded on this form or not) are, as applicable under the EEOC anti-discrimination statutes (EEOC statutes), to preserve private suit rights under the EEOC statutes, to invoke the EEOC's jurisdiction and, where dual-filing or referral arrangements exist, to begin state or local proceedings.
- **4. ROUTINE USES.** This form is used to provide facts that may establish the existence of matters covered by the EEOC statutes (and as applicable, other federal, state or local laws). Information given will be used by staff to guide its mediation and investigation efforts and, as applicable, to determine, conciliate and litigate claims of unlawful discrimination. This form may be presented to or disclosed to other federal, state or local agencies as appropriate or necessary in carrying out EEOC's functions. A copy of this charge will ordinarily be sent to the respondent organization against which the charge is made.
- **5.** Whether Disclosure is Mandatory; Effect of Not Giving Information. Charges must be reduced to writing and should identify the charging and responding parties and the actions or policies complained of. Without a written charge, EEOC will ordinarily not act on the complaint. Charges under Title VII, the ADA or GINA must be sworn to or affirmed (either by using this form or by presenting a notarized statement or unsworn declaration under penalty of perjury); charges under the ADEA should ordinarily be signed. Charges may be clarified or amplified later by amendment. It is not mandatory that this form be used to make a charge.

#### NOTICE OF RIGHT TO REQUEST SUBSTANTIAL WEIGHT REVIEW

Charges filed at a state or local Fair Employment Practices Agency (FEPA) that dual-files charges with EEOC will ordinarily be handled first by the FEPA. Some charges filed at EEOC may also be first handled by a FEPA under worksharing agreements. You will be told which agency will handle your charge. When the FEPA is the first to handle the charge, it will notify you of its final resolution of the matter. Then, if you wish EEOC to give Substantial Weight Review to the FEPA's final findings, you must ask us in writing to do so within 15 days of your receipt of its findings. Otherwise, we will ordinarily adopt the FEPA's finding and close our file on the charge.

### **NOTICE OF NON-RETALIATION REQUIREMENTS**

Please **notify** EEOC or the state or local agency where you filed your charge **if retaliation is taken against you or others** who oppose discrimination or cooperate in any investigation or lawsuit concerning this charge. Under Section 704(a) of Title VII, Section 4(d) of the ADEA, Section 503(a) of the ADA and Section 207(f) of GINA, it is unlawful for an *employer* to discriminate against present or former employees or job applicants, for an *employment agency* to discriminate against anyone, or for a *union* to discriminate against its members or membership applicants, because they have opposed any practice made unlawful by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an

investigation, proceeding, or hearing under the laws. The Equal Pay Act has similar provisions and Section 503(b) of the ADA prohibits coercion, intimidation, threats or interference with anyone for exercising or enjoying, or aiding or encouraging others in their exercise or enjoyment of, rights under the Act.

EEOC Form 212-A	A (3/98)	
	U.S. Equal Employment (	Opportunity Commission
TO:	Illinois Department Of Human Rights 100 West Randolph Street Floor 10-100 Chicago, IL 60601	Date <b>May 24, 2021</b> EEOC Charge No. 440-2021-02528 FEPA Charge No.
CHARGE TRA	ANSMITTAL	
SUBJECT:	Brian Postrelko v.	CHICAGO POLICE DEPARTMENT
_	Charging Party	Respondent
Transmitted h	erewith is a charge of employment discrimination initially rece	on May 12, 2021  Date of Receipt
X Purs	uant to the worksharing agreement, this charge is to be initial	,
Purs	uant to the worksharing agreement, this charge is to be initial	ly investigated by the FEPA.
The	worksharing agreement does not determine which agency is	to initially investigate the charge.
	EEOC requests a waiver	FEPA waives
	No waiver requested	FEPA will investigate the charge initially
	Please complete the bottom portion of this fo and, where appropriate, to indicate whether the	
Typed Name	and Title of EEOC or FEPA Official	Signature/Initials
	Julianne Bowman, District Director	Julianne Bowman/zb
	Brian Postrelko v.	CHICAGO POLICE DEPARTMENT
	Charging Party	Respondent
TO WHO	M IT MAY CONCERN:	
This	will acknowledge receipt of the referenced charge and indica	te this Agency's intention to initially investigate the charge.
This	will acknowledge receipt of the referenced charge and indica	te this Agency's intention not to initially investigate the charge.
This	will acknowledge receipt of the referenced charge and reque	st a waiver of initial investigation by the receiving agency.
	will acknowledge receipt of the referenced charge and indic ving reasons:	ate this Agency's intention to dismiss/close/not docket the charge for the
12.70	Š	
Typed Name	and Title of EEOC or FEPA Official	Signature/Initials
	James L. Bennett, Director	James L. Bennett/zb
TO:	Chicago District Office	Date <b>May 24, 2021</b>
	230 S. Dearborn	EEOC Charge No.
	Suite 1866 Chicago II 60604	440-2021-02528
	Chicago, IL 60604	FEPA Charge No.
		Ü

Case: 1:22-cv-00173 Document #: 1-1 Filed: 01/11/22 Page 72 of 127 PageID #:75



September 20, 2021

### Via Email Only: Pamela.Buscemi@cityofchicago.org

Pamela Buscemi, Paralegal II City of Chicago, Law Department Employment Litigation Division 2 North LaSalle Street, Suite 640 Chicago, IL 60602

RE: Freedom of Information Act Request ("FOIA"):

Brian Postrelko v. Chicago Police Department, EEOC Charge No. 440-2021-02528

Dear Ms. Buscemi:

On September 15, 2021, the Illinois Department of Human Rights ("Department") received your FOIA request in which you requested a copy of the above-referenced investigation file.

Section 2(c) of FOIA defines "public records" as including "all records, reports, forms, writings ... and all other documentary materials pertaining to the transaction of public business ... having been prepared by or for, or having been or being used by, received by, in possession of, or under the control of any public body." 5 ILCS 140/2(c).

The Department will provide you with a copy of the documentation it has in its possession related to the above-referenced matter. The Department's records show that on May 12, 2021, Brian Postrelko ("Mr. Postrelko"), filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"), against the Chicago Police Department, which was cross-filed with the Department. Further, the Department's records show that on May 24, 2021, the Department notified Mr. Postrelko, via U.S. mail, that to proceed with his charge before the Department he must notify the Department in writing within 30 days after receiving the EEOC's findings. However, the Department's records do not show that Mr. Postrelko notified the Department in writing of his intent to proceed before the Department. Therefore, the Department did not investigate Mr. Postrelko's allegations and is unable to provide you with a copy of the above-referenced investigation file. The documentation is attached hereto.

To the extent you consider this response to be a denial of your FOIA request, you have the right to submit a request for review by the Public Access Counselor ("PAC") of the Office of the Illinois Attorney General to: Public Access Counselor, Office of the Attorney General, 500 South 2<sup>nd</sup> Street, Springfield, Illinois 62706, Fax: 217-782-1396, E-mail: <a href="mailto:publicaccess@atg.state.il.us">publicaccess@atg.state.il.us</a>. If you choose to submit a request for review, you must do so within 60 days after the date of this response letter. The request for review must be in writing, signed by you, and include a copy of your FOIA request and this office's response. 5 ILCS 140/9.5(a). In addition, you have the right to seek judicial review of this response. 5 ILCS 140/11(a), (b).

Sincerely,

Keisha T. Nelson

Leisle J. Alon

Freedom of Information Act Officer

INTHE	CIRCUIT COURT OF COC	OK COUNTY, ILLINOIS	
	COUNTY DEPARTMENT	T, LAW DIVISION	
Brian Postrelko,		)	· · · · · · · · · · · · · · · · · · ·
Plaintiff,		No. 21 L 6834	
i lustituit,		)	
	<b>V.</b>	Commercial Calendar T	
City of Chicago, et al,		) Judge Daniel J. Kubasiak	
Defendant.	BRIEFING SCH	EDULE ORDER	
This cause coming to be having been given, and the Cou	1	cial Calendar "T" Status or Motion C	all, due notice
naving been given, and the Cot	int being runy auviseu in	tile pielilises,	
IT IS HEREBY ORDERED:			
(1) Movant, City and Cooney	is granted leave t	to file their MTD	and
Memorandum in Support t	hereof instanter or by _	;	(4231)
(2) Respondent, Plaintiff	shall file their Res	ponse by <u>11</u> / <u>05</u> / <u>2021</u> ;	(4231)
(3) Movant shall file their Repl	y by 11 /19 /2021		(4231)
11 /29 /21 at 8:45 documents, which must be	a.m. with two complet ubmitted in written for ich are being attacked,	904) at the Clerk's Status Call on <u>e sets</u> of courtesy copies of <b>ALL</b> m, including MOTION, RESPONSE, R as well as any applicable DEPOSITIO	
(5) NO SUPPLEMENTAL BRIEFS	OR CITATIONS FILED V	VITHOUT LEAVE OF COURT;	
(6) No continuance of any of the	e above dates will be g	ranted without leave of Court;	
		It in either striking or ruling on the	
Motion without hearing, as (8 A full set of courtesy copies sho	uld be emailed to Law.call	cc@cookcountyil.gov.	
(8)			-transferration (strict)
		Judge Daniell, Kubasiak-2	
Attroney Name: J. Durkin			
Attorney for: Defenda Firm: Corporation Counsel	nt		
Direct Phone: 312-744-2836		CLERK OF THE CIRCUIT CO	
Fax: 312-744-3989		CLERN OF THE DIROUNTY, IL	
Email: jessica.durkin@cityofchica	go.org		
		ENTER: Honorable Daniel J. k	
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Case: 1:22-cv-00173 Document #: 1-1 Filed: 01/11/22 Page 73 of 127 PageID #:76

### IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION IRIS Y. MARTINEZ CIRCUIT CLERK

FILED 11/16/2021 11:58 AM IRIS Y. MARTINEZ CIRCUIT CLERK COOK COUNTY, IL 2021L006834

BRIAN POSTRELKO,

15618034

Plaintiff,

v.

CITY OF CHICAGO, a Municipal Corporation, POLICE DEPARTMENT, and officer CARRIE A. COONEY, individually, and as an agent and employee of the CITY OF CHICAGO,

Defendants.

Commercial Calendar T

No.: 2021 L 006834

Hon. Daniel J. Kubasiak

### DEFENDANTS' AGREED MOTION TO STRIKE BRIEFING SCHEDULE AND GRANT PLAINTIFF LEAVE TO FILE AMENDED COMPLAINT

The Defendants, City of Chicago and Carrie A. Cooney, through their attorney, CELIA MEZA, Corporation Counsel for the City of Chicago, move to strike the October 13, 2021 briefing schedule order and grant Plaintiff leave to file an amended complaint. Defendants state the following in support of their agreed motion.

- 1. Plaintiff filed this lawsuit on July 6, 2021. Plaintiff is a current employee of the Defendant City of Chicago. Defendant Cooney was formerly Plaintiff's supervisor.
- 2. In his Complaint, Plaintiff alleges, *inter alia*, that the City of Chicago and Defendant Cooney engaged in acts of employment discrimination and retaliation in violation of the Illinois Human Rights Act, 775 ILCS 5/1-101, *et seq*.
- 3. Defendants filed motions to dismiss pursuant to 735 ILCS 5/2-619.1 on October 1, 2021.
- 4. On October 13, 2021, The Court entered a briefing schedule order for the motions to dismiss. Plaintiff's response briefs were due November 5, 2021, and Defendants' reply briefs are

currently due November 19, 2021. The matter is set for a clerk's status on 8:45 a.m. on November 21, 2021. (A copy of the *October 13, 2021 order* is attached as Exhibit 1).

5. On November 5, 2021, Plaintiff timely filed responses to the motions to dismiss. In Plaintiff's response to the City's motion to dismiss, Plaintiff indicated, *inter alia*, that he inadvertently omitted a claim alleging Defendant City of Chicago violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, *et seq.* Plaintiff requested leave to amend his complaint, stating:

In addition to responding to the Defendant's Motion to Dismiss, the Plaintiff is requesting leave to amend his Complaint to correct an inadvertent clerical error. The Complaint at Law was filed pursuant to the EEOC's Notice of Rights letter, as evidenced by it being attached to and referenced in the Complaint at Law. As such, the Complaint at Law was intended to allege the CITY OF CHICAGO violated both the Illinois Human Rights Act as well as Title VII of the Civil Rights Act.

Plaintiff's Response to the City's Motion to Dismiss (Ex. 2), p. 3.

- 6. The undersigned attorneys do not object to Plaintiff's request for leave to file an amended complaint.
- 7. One of the undersigned attorneys spoke with Plaintiff's counsel *via* phone on the morning of November 15, 2021. During the call, the parties agreed that to avoid wasting judicial resources and to expedite this matter's resolution, it would be prudent to strike the remainder of the briefing schedule and permit Plaintiff to file an amended complaint.
- 8. On November 16, 2021, the parties agreed to a proposed order, which Defendants are submitting to the Court concurrently with this motion.

Wherefore, the Defendants respectfully request this Court enter an agreed order:

- 1. Striking the October 13, 2021 briefing schedule order;
- 2. Striking the November 29, 2021, 8:45 a.m. clerk status;
- 3. Granting Plaintiff until December 15, 2021 to file an Amended Complaint;
- Granting Defendants 30 days thereafter, or until January 14, 2022 to respond to the Amended Complaint; and

5. Permitting Defendant Cooney and Defendant City of Chicago to withdraw their

Motions to Dismiss as moot, without prejudice.

Dated: November 16, 2021 Respectfully submitted,

CELIA MEZA

By: s/ Scott Crouch

SCOTT CROUCH

Corporation Counsel of the City of Chicago

Attorney No.: 90909 City of Chicago, Department of Law Employment Litigation Division 2 North LaSalle Street, Suite 640

Chicago, Illinois 60602

Jessica.Durkin@cityofchicago.org Scott.Crouch@cityofchicago.org (312) 744-2836 | (312) 744-8369 By: <u>s/ Jessica R. Durkin</u> JESSICA R. DURKIN

Assistants Corporation Counsel

Counsel for Defendants

FILED 11/16/2021 12:36 PM IRIS Y. MARTINEZ CIRCUIT CLERK COOK COUNTY, IL 2021L006834 15619146

# Exhibit 1

IN THE	CIRCUIT COURT OF COOK COUNTY DEPARTMENT,			
Brian Postrelko,		)		
Plaintiff,		) No.	21 L 6834	
	v	) Com	nmercial Calendar T	
City of Chicago, et al,		) Judg	ge Daniel J. Kubasiak	
Defendant.	BRIEFING SCHEE	) DULE ORDER	•	
	DRIEF ING SCITE	DOLL CROLL	•	
This cause coming to be having been given, and the Cou			"T" Status or Motion Call, ( ,	due notice
IT IS HEREBY ORDERED:		cu MT	<b>TD</b>	
(1) Movant, <u>City and Cooney</u> Memorandum in Support th	is granted leave to	file their <u>Mi</u>	and .	(4231)
Memorandum in Support of	lereor instanter or by			(4231)
(2) Respondent, Plaintiff	shall file their Respo	onse by <u>11</u>	<u>/05</u> <u>/ 2021</u> ;	(4231)
(3) Movant shall file their Repl	by <u>11 /19 /2021</u> ;			(4231)
(4) The moving party <b>must</b> pro 11 /29 /21 at 8:45 documents, which must be s COMPLAINT, PLEADINGS, wh TRANSCRIPTS, EXHIBITS, ETC.	a.m. with two complete submitted in written form, ich are being attacked, as	<u>sets</u> of court , including N	tesy copies of <b>ALL</b> MOTION, RESPONSE, REPLY applicable DEPOSITION	/, 15/4374)
(5) NO SUPPLEMENTAL BRIEFS	OR CITATIONS FILED WI	THOUT LEAV	VE OF COURT;	
(6) No continuance of any of the	e above dates will be gra	inted withou	it leave of Court;	
(7) Lack of compliance with an Motion without hearing, as	applicable:			
(8 A full set of courtesy copies sho	uld be emailed to Law.calTco	c@cookcount	yil.gov.	
			NIERED	
Attroney Name: J. Durkin		Jud	ge Daniel I. Kubasiak-2072	
Attorney for: Defenda  Firm: Corporation Counsel	nt	TO THE PROPERTY OF THE PROPERT	OCT 13 2021	a-verandericative.
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FILED 11/16/2021 11:58 AM IRIS Y. MARTINEZ CIRCUIT CLERK COOK COUNTY, IL 2021L006834

15618034

## Exhibit 2

### IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION

FILED 11/5/2021 4:42 PM IRIS Y. MARTINEZ CIRCUIT CLERK COOK COUNTY, IL 2021L006834

BRIAN POSTRELKO	)		
Plaintiff,	)		
	)		
Vs.	)	No.: 21 L 6834	
	)		
CITY OF CHICAGO, a Municipal	)		
Corporation, POLICE DEPARTMENT,	)		
and officer CARRIE A. COONEY,	)		
individually, and as an agent and	)		
employee of the CITY OF CHICAGO,	)		
	)		
Defendants.	)		

### PLAINTIFF'S RESPONSE TO DEFENDANT CITY OF CHICAGO'S MOTION TO DISMISS PURSUANT TO 735 ILCS 5/2-619.1

NOW COMES Plaintiff, BRIAN POSTRELKO, by and through his attorneys, CUDA LAW OFFICES, LTD., and for his Response to Defendant's Motion to Dismiss Plaintiff's Complaint Pursuant to 735 ILCS 5/2-619.1, states as follows:

#### I. FACTUAL BACKGROUND

On May 12, 2021, the Plaintiff, BRIAN POSTRELKO, timely cross-filed a Charge of Discrimination with the EEOC and the Illinois Department of Human Rights. (Exhibit A – Charge of Discrimination). The EEOC issued their Dismissal and Notice of Rights letter on May 24, 2021; just twelve (12) days after the Charge of Discrimination was filed. (Exhibit B – EEOC Dismissal and Notice of Rights). The letter dated May 24, 2021, from the Illinois Department of Human Rights, indicates the following: "The 365-day time period for the Department to investigate your EEOC charge is tolled while the EEOC is investigating your charge and does not begin to run until the EEOC issues its findings. Your failure to timely provide the EEOC's findings to the

Department will result only in the Department closing your file." (Exhibit C – May 24, 2021, IDHR Letter).

On July 6, 2021, the Plaintiff filed his Complaint at Law against the CITY OF CHICAGO, a Municipal Corporation, POLICE DEPARTMENT, and officer CARRIER A. COONEY, individually and as an agent and employee of the CITY OF CHICAGO. (Exhibit D – Complaint at Law). Plaintiff contends that between January and April 2021, his then-supervisor, Defendant Sgt. CARRIE COONEY, sexually harassed him, battered him and intentionally inflicted emotional distress. The Complaint puts forth the following allegations:

- a. Took an unconsented and inappropriate picture of BRIAN POSTRELKO's buttocks;
- b. Pulled BRIAN POSTRELKO by his backpack without his consent;
- c. Touched BRIAN POSTRELKO on his back and neck without his consent;
- d. Grazed up against BRIAN POSTRELKO's buttocks and back without his consent;
- e. Grabbed and fixed BRIAN POSTRELKO's shirt collar without his consent;
- f. Violated social distancing protocols;
- g. Made inappropriate and unwanted sexual comments towards BRIAN POSTRELKO;
- h. Sexually harassed BRIAN POSTRELKO;
- i. Retaliated against BRIAN POSTRELKO for denying her inappropriate and unwanted advances; and
- j. Sexually discriminated against BRIAN POSTRELKO on the basis of his sex.

A copy of the Charge of Discrimination as well as a copy of the Dismissal and Notice of Rights letter were attached as exhibits to Plaintiff's Complaint at Law. (Exhibit D – Complaint at Law). The Complaint at Law was filed well within the 90-day filing period. On October 1, 2021,

the Defendant CITY OF CHICAGO filed their Motion to Dismiss pursuant to 735 ILCS 5/2-619.1.

The CITY OF CHICAGO's Motion to Dismiss requests all Counts against the CITY OF

CHICAGO be dismissed with prejudice.

In addition to responding to the Defendant's Motion to Dismiss, the Plaintiff is requesting leave to amend his Complaint to correct an inadvertent clerical error. The Complaint at Law was filed pursuant to the EEOC's Notice of Rights letter, as evidenced by it being attached to and referenced in the Complaint at Law. As such, the Complaint at Law was intended to allege the CITY OF CHICAGO violated both the Illinois Human Rights Act as well as Title VII of the Civil Rights Act.

#### **LEGAL STANDARD**

Under section 2-615 of the Illinois Code of Civil Procedure, a party may move for dismissal of an action where the pleadings fail to state a cause of action. *Cont'l Mobile Tel. Co. v. Chi. S M S A Ltd. P'ship*, 225 Ill. App. 3d 317, 324, 167 Ill. Dec. 554, 559, 587 N.E.2d 1169, 1174 (1992). A cause of action should not be dismissed on the pleadings unless it clearly appears that no set of facts can be proved which will entitle the plaintiff to recover. *Id.* The complaint must be construed liberally and should only be dismissed when it appears that plaintiff could not recover under any set of facts. *Basler*, 188 Ill. App. 3d 178, 544 N.E.2d 60.

A dismissal with prejudice is deemed to be as conclusive of the rights of the parties as if the matter had proceeded to trial, and had been resolved by a final judgment adverse to plaintiff. *Dunavan v. Calandrino*, 167 Ill. App. 3d 952, 960, 118 Ill. Dec. 892, 896, 522 N.E.2d 347, 351 (1988). Dismissal with prejudice is only warranted where it is certain from the face of the complaint that amendment would be futile. *Gill v. CEC Emple. Grp., LLC*, No. 19 CV 8099, 2020 U.S. Dist. LEXIS 184700, at \*10 (N.D. Ill. Oct. 6, 2020). Plaintiffs generally are granted at least

one opportunity to amend their pleadings. *Sinclair v. State Bank of Jerseyville*, 226 III. App. 3d 909, 168 III. Dec. 462, 589 N.E.2d 862, 1992 III. App. (III. App. Ct. 4th Dist. 1992). The Court may consider documents attached to the complaint and documents that are referenced in and central to its claims. *Reed v. Palmer*, 906 F.3d 540, 548 (7th Cir. 2018).

In Illinois, a claim relates back when it arises out of the same transaction or occurrence as the one identified in the original complaint. *Schorsch v. Hewlett-Packard Co.*, 417 F.3d 748, 751 (7th Cir. 2005). Illinois has a relation-back rule that is functionally identical to Fed. R. Civ. P. 15(c). *Id.* An amendment relates back in Illinois when the original complaint "furnished to the defendant all the information necessary . . . to prepare a defense to the claim subsequently asserted in the amended complaint." *Boatmen's National Bank of Belleville v. Direct Lines, Inc.*, 167 Ill. 2d 88, 102, 656 N.E.2d 1101, 1107, 212 Ill. Dec. 267 (1995).

#### **ARGUMENT**

#### A.Plaintiff's IHRA claim against the City of Chicago should not be dismissed

Under the IHRA, an individual has 300 calendar days after the date that a civil rights violation allegedly has been committed to file a charge of discrimination. 775 Ill. Comp. Stat. Ann. 5/7A-102. Section (A-1)(1) of 775 ILCS 5/7A-102 states the following:

"(1) If a charge is filed with the Equal Employment Opportunity Commission (EEOC) within 300 calendar days after the date of the alleged civil rights violation, the charge shall be deemed filed with the Department on the date filed with the EEOC. If the EEOC is the governmental agency designated to investigate the charge first, the Department shall take no action until the EEOC makes a determination on the charge and after the complainant notifies the Department of the EEOC's determination. In such cases, after receiving notice from the EEOC that a charge was filed, the Department shall notify the

parties that (i) a charge has been received by the EEOC and has been sent to the Department for dual filing purposes; (ii) the EEOC is the governmental agency responsible for investigating the charge and that the investigation shall be conducted pursuant to the rules and procedures adopted by the EEOC; (iii) it will take no action on the charge until the EEOC issues its determination; (iv) the complainant must submit a copy of the EEOC's determination within 30 days after service of the determination by the EEOC on complainant; and (v) that the time period to investigate the charge contained in subsection (G) of this Section is tolled from the date on which the charge is filed with the EEOC until the EEOC issues its determination." 775 Ill. Comp. Stat. Ann. 5/7A-102.

The IHRA does not require that a charge actually be investigated by the Illinois Department of Human Rights. *Nieman v. Grange Mut. Cas. Co.*, No. 11-3404, 2012 U.S. Dist. LEXIS 59180, at \*8-9 (C.D. Ill. Apr. 26, 2012).

BRIAN POSTRELKO's charge of discrimination was cross-filed with the EEOC and IDHR within the 300-day limitation period. In fact, the 300-day limitation period does not expire until February 1, 2022. The May 24, 2021, letter issued to BRIAN POSTRELKO by the Illinois Department of Human Rights, indicates the following:

"Your failure to timely provide the EEOC's findings to the Department will result <u>only</u> in the Department closing your file." (Exhibit C - May 24, 2021, IDHR Letter).

There is no language within the letter issued by the Illinois Department of Human Rights or the Human Rights Act that provides for the dismissal of the charge should the EEOC's findings not be reported to the IDHR within 30-days. In this case, the 30-day "reporting period" lapsed well before the 300-day limitation period provided for in the IHRA. In essence, the Defendant's interpretation

of the IHRA shortens an individual's limitation period for pursuing their charge. This would go against public policy as it negates the length of time an individual has to file a claim in the first place. It would be contradictory to the 300-day policy for a claim to be lapsed and dismissed due to the failure to share findings with the non-investigating department. As the 300-day limitation period has not lapsed, BRIAN POSTRELKO should still be allowed to pursue his IDHR charge.

As mentioned above, the Complaint at Law was filed pursuant to the EEOC's Notice of Rights letter, as evidenced by it being attached to and referenced in the Complaint at Law. As such, the Complaint at Law was intended to allege the CITY OF CHICAGO violated both the Illinois Human Rights Act as well as Title VII of the Civil Rights Act. The language alleging the CITY OF CHICAGO violated Title VII of the Civil Rights Act was inadvertently omitted from the filed Complaint at Law. The original Complaint at Law was timely filed, the Plaintiff has never amended his Complaint at Law, the EEOC's Notice of Rights letter was attached to the original Complaint at Law, the amended claim arose out of the same occurrences as the one identified in the original complaint and the original complaint provided the Defendants with all the information necessary to prepare a defense to the amended complaint. As such, the Plaintiff requests leave to amend his Complaint to remedy the inadvertent omission by adding the violation of Title VII of the Civil Rights Act.

## B-C.The IHRA does not preempt Plaintiff's Battery or IIED claims. Plaintiff's cause of action for IIED contained in Count III of his Complaint at Law is sufficiently plead and should not be dismissed

The battery and intentional infliction of emotional distress claims alleged against the CITY OF CHICAGO and officer CARRIE A. COONEY, individually and as an agent and employee of the CITY OF CHICAGO, are not inextricably linked to the civil rights violation that is also alleged by Plaintiff. The circuit court is not precluded from exercising jurisdiction over all tort claims that

related factually to a civil rights violation. *Maksimovic v. Tsogalis*, 177 Ill. 2d 511, 517. Whether the circuit court may exercise jurisdiction over a tort claim depends upon whether the tort claim is inextricably linked to a civil rights violation, such that there is no independent basis for the action apart from the Act itself. *Schroeder v. RGIS*, *Inc.*, 2013 IL App (1st) 122483, P26. If a plaintiff is able to establish the necessary elements of the alleged tort independent of any duties created by the Human Rights Act or Title VII, then the common law tort claim is not inextricably linked with the civil rights violation and the circuit court may exercise jurisdiction. *Id*.

Under Illinois law, the following elements are required to state a claim for the tort of intentional infliction of emotional distress: (1) extreme and outrageous conduct; (2) intent to cause severe emotional distress or knowledge that there is a high probability of causing severe emotional distress; and (3) the conduct actually caused severe emotional distress. *Mazurek v. Cook County*, 2003 U.S. Dist. LEXIS 9100, \*8. In determining whether conduct is outrageous and extreme, we use an objective standard based on all the facts and circumstances of the case. *Schroeder v. RGIS, Inc.*, 2013 IL App (1st) 122483, ¶ 27, 992 N.E.2d 509. Whether a defendant abused a position of actual or apparent authority is a factor to consider when determining whether conduct is outrageous. *Id.* 

Under Illinois law, the following elements are required to state a claim for the tort of battery; (1) an intentional act on the part of the defendant; (2) a resulting offensive contact with plaintiff's person; and (3) a lack of consent to the defendant's conduct. *McNeil v.* Brewer, 304 Ill.App.3d 1050, 1053 (1999).

In *Maksimovic v. Tsogalis*, 177 Ill. 2d 511 (1997), the plaintiff filed claims of assault, battery, and false imprisonment against the defendant. The defendant moved for summary judgment arguing that plaintiff's claims were barred, and the exclusive remedy was with the

Illinois Human Rights Commission. (*Id.*). The Court disagreed and found that a common law tort claim is not inextricably linked with a civil rights violation where a plaintiff can establish the necessary elements of the tort, independent of any legal duties created by the Illinois Human Rights Act. (*Id* at 516). The court further found that it was not the legislative intent to abolish all common law torts factually related to sexual harassment. (*Id.*). The court found that the sexual harassment aspect of this case is merely incidental to what are otherwise ordinary common law tort claims. (*Id.*). The plaintiff alleged facts sufficient to establish the elements of assault, battery, and false imprisonment, which are long recognized tort actions that exist separate and apart from a cause of action for sexual harassment. (*Id.*).

The distinction between claims that are preempted and claims that are not preempted is well established and turns on the legal duty that the defendant allegedly breached; if the conduct would be actionable even aside from its character as a civil rights violation, because the Illinois Human Rights Act did not furnish the legal duty that the defendant was alleged to have breached, the IHRA does not preempt a state law claim seeking recovery for it. *Naeem v. McKesson Drug Co.*, 444 F.3d 593, 603 (2006).

In this case, BRIAN POSTRELKO alleged facts sufficient to establish the elements of the common law tort of intentional infliction of emotional distress and battery.

BRIAN POSTRELKO was continually violated and harassed by CITY OF CHICAGO agent and employee, CARRIE A. COONEY. Defendant, CARRIE A. COONEY, continually embarrassed Plaintiff in front of co-workers, assigned the Plaintiff unreasonable work tasks, denied him work re-assignment requests, followed him to and from the parking lot, made inappropriate comments towards the Plaintiff, made unwanted and unconsented physical contact with the Plaintiff and continually threatened the Plaintiff by stating she "had dirt on him." She would repeatedly scold

him in front of co-workers for being on his phone, all while other co-workers could be on their phones.

Finally, BRIAN POSTRELKO reported his discomfort and disgust with her behavior. However, even after reporting his discomfort and disgust, CARRIE A. COONEY continued to harass the Plaintiff. Additionally, no one at the CITY OF CHICAGO took any remedial action.

The actions of CARRIE A. COONEY were outrageous and were intentionally continued despite BRIAN POSTRELKO's continued plea of discomfort and continual pleas for her to stop. Any reasonable person would conclude that all these events are extreme and outrageous. The CITY OF CHICAGO and CARRIE A. COONEY knew or should have known that these actions would cause emotional distress to BRIAN POSTRELKO. These occurrences have caused BRIAN POSTRELKO to suffer from severe emotional distress, for which he sought and continues to seek medical treatment. These occurrences on their own are enough to meet the elements of intentional infliction of emotional distress.

These facts are also sufficient to establish the elements of battery. CARRIE A. COONEY forcefully grabbed BRIAN POSTRELKO by his backpack and on multiple occasions touched his back, neck and buttocks without consent. No reasonable person would refute that the actions of CARRIE A. COONEY were intentional. There is no doubt that the impermissible touching committed by CARRIE A. COONEY to BRIAN POSTRELKO was offensive contact. This type of contact was unwanted and offensive to the Plaintiff, and he never consented to being touching or grabbed by CARRIE A. COONEY. In accord with the established rules, these claims are actionable, as the common law tort claims are not inextricably linked to a civil rights violation, and the Plaintiff can establish the necessary elements of the tort independent of any legal duties created by the Illinois Human Rights Act or Title VII of the Civil Rights Act.

FILEIDEDATATE: 1/1/16/52/202114:58 RM 2021L006834

The individual tort claims of intentional infliction of emotional distress and battery as alleged by Plaintiff, are not inextricably linked to the EEOC or IHRA claims. The Plaintiff alleged facts relative to each tort that are sufficient to establish the elements of each common law tort claim. Therefore, they should remain pending with this court on their face.

D. Plaintiff agrees to dismiss the Chicago Police Department from this case.

E. The Plaintiff requests leave to amend his Complaint to remove the requests seeking punitive damages against the City of Chicago.

WHEREFORE, the Plaintiff, BRIAN POSTRELKO, respectfully requests this Honorable Court to enter an order denying, in its entirety, Defendant's Motion to Dismiss. In the alternative, Plaintiff respectfully requests leave to amend his Complaint at Law to include the Title VII Civil Rights violation, to include a more definite and complete statement of facts and to clarify that the battery and intentional infliction claims are not inextricably linked to the civil rights claims.

Respectfully submitted:

*Anthony Cuda*Attorney for Plaintiff

#27099 CUDA LAW OFFICES, LTD. 6525 W. North Avenue, Suite 204 Oak Park, Illinois 60302 708-383-4900 acuda@cudalaw.com

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EEOC Form 5 (11/09)			gency(les) Charge TINEZ
CHARGE OF DISCRIMINATION	Charge	e Presented To: $\frac{A}{N}$	O(S): CIRCUIT CLERK
This form is affected by the Privacy Act of 1974. See enclosed Privacy Act		FEPA	COOK COUNTY,
Statement and other information before completing this form.	X	EEOC	440-2021-02528
ILLINOIS DEPARTMENT C		N RIGHTS	and EEOC
Name (indicate Mr., Ms., Mrs.)	- <b>y</b> ,	Home Phone	Year of Birth
MR. BRIAN POSTRELKO		(773) 972-70	09 1977
7061 NORTH KEDZIE AVENUE, STE 1713, CHICA	_		
Named is the Employer, Labor Organization, Employment Agency, Appre That I Believe Discriminated Against Me or Others. (If more than two, lis	enticeship Con	nmittee, or State or Loc	al Government Agency
Name	E Brider Training	No. Employees, Members	Phone No.
CHICAGO POLICE DEPARTMENT		501+	(312) 746-6000
	and ZIP Code		
3510 SOUTH MICHIGAN AVENUE, CHICAGO, IL 6	50653		
Name		No. Employees, Members	Phone No.
Street Address City, State	and ZIP Code		
RACE COLOR X SEX RELIGION  X RETALIATION AGE DISABILITY GEN  OTHER (Specify)  THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):  I began my employment with Respondent on or alis Police Officer. During my employment, I have be also subjected to different terms and conditions of harsher work assignments. I complained to Respondence of the protected activity, in violation of Timended.	een subject of employn ondent. se of my s tie VII of t	Der 31, 2005. My cted to sexual hannent, including to the Civil Rights A DEPT. OF HUMA INTAKE DIV.  May 24, 7  RECEIV  BY:	continuing action  current position  rassment. I was out not limited to,  retaliation for act of 1964, as N RIGHTS ISION 2021
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.	I swear or af	firm that I have read th	the above charge and that it
I declare under penalty of perjury that the above is true and correct.	SIGNATURE O	F COMPLAINANT	e, information and belief.
Digitally signed by Brian Postrelko on 05-12-2021 02:00 PM EDT	SUBSCRIBED (month, day.	AND SWORN TO BEFORE N year)	
			EXHIBIT

CP Enclosure with EEOC Form 5 (11/09)

PRIVACY ACT STATEMENT: Under the Privacy Act of 1974, Pub. Law 93-579, authority to request personal data and its uses are:

- 1. FORM NUMBER/TITLE/DATE. EEOC Form 5, Charge of Discrimination (11/09).
- 2. AUTHORITY. 42 U.S.C. 2000e-5(b), 29 U.S.C. 211, 29 U.S.C. 626, 42 U.S.C. 12117, 42 U.S.C. 2000ff-6.
- 3. PRINCIPAL PURPOSES. The purposes of a charge, taken on this form or otherwise reduced to writing (whether later recorded on this form or not) are, as applicable under the EEOC anti-discrimination statutes (EEOC statutes), to preserve private suit rights under the EEOC statutes, to invoke the EEOC's jurisdiction and, where dual-filing or referral arrangements exist, to begin state or local proceedings.
- **4. ROUTINE USES.** This form is used to provide facts that may establish the existence of matters covered by the EEOC statutes (and as applicable, other federal, state or local laws). Information given will be used by staff to guide its mediation and investigation efforts and, as applicable, to determine, conciliate and litigate claims of unlawful discrimination. This form may be presented to or disclosed to other federal, state or local agencies as appropriate or necessary in carrying out EEOC's functions. A copy of this charge will ordinarily be sent to the respondent organization against which the charge is made.
- 5. WHETHER DISCLOSURE IS MANDATORY; EFFECT OF NOT GIVING INFORMATION. Charges must be reduced to writing and should identify the charging and responding parties and the actions or policies complained of. Without a written charge, EEOC will ordinarily not act on the complaint. Charges under Title VII, the ADA or GINA must be sworn to or affirmed (either by using this form or by presenting a notarized statement or unsworn declaration under penalty of perjury); charges under the ADEA should ordinarily be signed. Charges may be clarified or amplified later by amendment. It is not mandatory that this form be used to make a charge.

#### NOTICE OF RIGHT TO REQUEST SUBSTANTIAL WEIGHT REVIEW

Charges filed at a state or local Fair Employment Practices Agency (FEPA) that dual-files charges with EEOC will ordinarily be handled first by the FEPA. Some charges filed at EEOC may also be first handled by a FEPA under worksharing agreements. You will be told which agency will handle your charge. When the FEPA is the first to handle the charge, it will notify you of its final resolution of the matter. Then, if you wish EEOC to give Substantial Weight Review to the FEPA's final findings, you must ask us in writing to do so within 15 days of your receipt of its findings. Otherwise, we will ordinarily adopt the FEPA's finding and close our file on the charge.

#### NOTICE OF NON-RETALIATION REQUIREMENTS

Please **notify** EEOC or the state or local agency where you filed your charge **if retaliation is taken against you or others** who oppose discrimination or cooperate in any investigation or lawsuit concerning this charge. Under Section 704(a) of Title VII, Section 4(d) of the ADEA, Section 503(a) of the ADA and Section 207(f) of GINA, it is unlawful for an *employer* to discriminate against present or former employees or job applicants, for an *employment agency* to discriminate against anyone, or for a *union* to discriminate against its members or membership applicants, because they have opposed any practice made unlawful by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an

investigation, proceeding, or hearing under the laws. The Equal Pay Act has similar provisions and Section 503(b) of the ADA prohibits coercion, intimidation, threats or interference with anyone for exercising or enjoying, or aiding or encouraging others in their exercise or enjoyment of, rights under the Act.

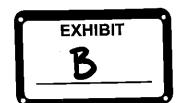
EEOC Form 161 (11/2020)  U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION					
DISMISSAL AND NOTICE OF RIGHTS					
7061 N STE 1	Postrelko Jorth Kedzie Avenue 713 go, IL 60645	From:	Chicago District Offi 230 S. Dearborn Suite 1866 Chicago, IL 60604	Ce	
	•	nerson(s) aggrieved whose identity is AL (29 CFR §1601.7(a))			
EEOC Charge	No.	EEOC Representative		Telephone No.	
440-2021-0	2528	Katarzyna Hammond, Investigator		(312) 872-9703	
THE EEOC	IS CLOSING ITS FI	LE ON THIS CHARGE FOR THE FOLL	OWING REASON:		
	The facts alleged in the	e charge fail to state a claim under any of the	statutes enforced by the E	EOC.	
	Your allegations did no	ot involve a disability as defined by the Americ	ans With Disabilities Act.		
	The Respondent employer	bys less than the required number of employe	ees or is not otherwise cov	ered by the statutes.	
	Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge				
The EEOC issues the following determination: The EEOC will not proceed further with its investigation, and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.					
	The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.			at investigated this charge.	
	Other (briefly state)				
		- NOTICE OF SUIT RIGH (See the additional information attached			
Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)					
Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.					
		On behalf of the Co	mmission		
		Julianne Bowman/ek	ν	5/24/2021	
Enclosures(s	)	Julianne Bowman.		(Date Issued)	

**District Director** 

CITY OF CHICAGO LAW DEPARTMENT LABOR

DIVISION Eileen Geary, Esq. **Chief Assistant Corporation Counsel** 2 North LaSalle Street, Suite 660 Chicago, IL 60602

CC:



Enclosure with EEOC Form 161 (11/2020)

### INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

(This information relates to filing suit in Federal or State court <u>under Federal law</u>.

If you also plan to sue claiming violations of State law, please be aware that time limits and other provisions of State law may be shorter or more limited than those described below.)

#### **PRIVATE SUIT RIGHTS**

Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), or the Age Discrimination in Employment Act (ADEA):

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge within 90 days of the date you receive this Notice. Therefore, you should keep a record of this date. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope or record of receipt, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed within 90 days of the date this Notice was issued to you (as indicated where the Notice is signed) or the date of the postmark or record of receipt, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

#### PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred more than 2 years (3 years) before you file suit may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit before 7/1/10 – not 12/1/10 – in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

#### ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do <u>not</u> relieve you of the requirement to bring suit within 90 days.

#### ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, please make your review request within 6 months of this Notice. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

JB Pritzker, Governor James L. Bennett, Director

May 24, 2021

Brian Postrelko 7061 N. Kedzie Ave., Suite 1713 Chicago, IL 60645

Re: Brian Postrelko v. Chicago Police Department #210524.012

#### Dear Complainant:

You are receiving this letter because you filed a charge with the United States Equal Employment Opportunity Commission (EEOC). The EEOC and the Illinois Department of Human Rights (Department) are parties to a cooperative agreement. Under this agreement, when you filed your charge of discrimination with the EEOC, a copy of the charge was automatically filed with the Department. The Department is keeping a copy of your EEOC charge on file to preserve jurisdiction under Illinois law.

Since you filed your discrimination charge initially with the EEOC, the EEOC is the governmental agency responsible for investigating the charge and the investigation will be conducted pursuant to the rules and procedures adopted by the EEOC. The Department will take no action on your charge until the EEOC issues its findings. After the EEOC issues its findings, if you want the Department to take any further action on your charge, you must send the Department a copy of the EEOC's findings within 30 days after service of the EEOC's findings on you. Please also send a one sentence written statement requesting that the Department investigate your charge and include the above Control Number. You may submit a copy of the EEOC's findings by either of the following methods:

By Mail: Send your EEOC findings and written statement via U.S. Postal certified mail, return receipt requested, to: Illinois Department of Human Rights, Attn: EEOC Referred Charges/Intake Unit, 100 W. Randolph St., Ste. 10-100, Chicago, IL 60601.

In Person: Bring an original and one copy of your EEOC findings and written statement to the Department. The Department will stamp and return the copies to you for your records.

If you received the EEOC's findings prior to receipt of this letter, you have 30 days from the date of this letter to send the Department a copy of the EEOC's findings. Upon receipt of the EEOC's findings, the Department will mail you a notice as to what further action the Department may take on your charge.

The 365-day time period for the Department to investigate your EEOC charge is tolled while the EEOC is investigating your charge and does not begin to run until the EEOC issues its findings. Your failure to timely provide the EEOC's findings to the Department will result only in the Department closing your file. This process does not affect the Investigation of your charge at EEOC. If you do not wish to proceed with the Department, you do not need to take any further action.

This letter does not apply to any settlement of this charge the parties have made with the EEOC.

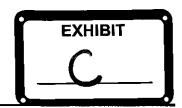
If you have any questions, please contact Thomas F. Roeser, Pre-Investigations Coordinator, at (312) 814-6295. Please do not contact the EEOC.

ILLINOIS DEPARTMENT OF HUMAN RIGHTS.

PRE1-EEOC 30 Rev 8/18

100 West Randolph Street, Suite 10-100, Chicago, IL 60801, (312) 814-6200, TTY (866) 740-3953, Housing Line (800) 662-3942 2309 West Jefferson Street, Springfield, IL 62702, (217) 765-5100 2309 West Main Street, Marion, IL 62959 (618) 993-7463 www.illinesis.gov/dhr

CC: Chicago Police Department, C/O Eileen Geary 2 N. LaSalle St., Suite 660 Chicago, IL 60602



EEOC Form 21:	2-A (3/98)	
	U.S. Equal Employment C	pportunity Commission
TO:	Illinois Department Of Human Rights 100 West Randolph Street Floor 10-100 Chicago, IL 60601	Date <b>May 24, 2021</b> EEOC Charge No. 440-2021-02528 FEPA Charge No.
OUADOE T	TO A MODALITY AL	-
	RANSMITTAL	
SUBJECT:	Brian Postrelko v.	CHICAGO POLICE DEPARTMENT
	Charging Party	Respondent
Transmitted	herewith is a charge of employment discrimination initially received	ved by the:
	EEOC	on May 12, 2021
. <u></u>	Nar	ne of FEPA Date of Receipt
X PL	ursuant to the worksharing agreement, this charge is to be initially	investigated by the EEOC.
PL	ursuant to the worksharing agreement, this charge is to be initially	investigated by the FEPA.
Th	ne worksharing agreement does not determine which agency is to	nitially investigate the charge.
_	EEOC requests a waiver	FEPA waives
	No waiver requested	FEPA will investigate the charge initially
	Please complete the bottom portion of this for and, where appropriate, to indicate whether th	m to acknowledge the receipt of the charge a Agency will initially investigate the charge.
Typed Nan	ne and Title of EEOC or FEPA Official	Signature/initials
	Julianne Bowman, District Director	Julianne Bowman/zb
	Brian Postrelko v.	CHICAGO POLICE DEPARTMENT
	Charging Party	Respondent
TO WH	HOM IT MAY CONCERN:	
	his will acknowledge receipt of the referenced charge and indicat	e this Agency's intention to initially investigate the charge.
│  □ "	his will acknowledge receipt of the referenced charge and indicat	e this Agency's intention not to initially investigate the charge.
□ π	his will acknowledge receipt of the referenced charge and reques	t a waiver of initial investigation by the receiving agency.
	his will acknowledge receipt of the referenced charge and indic	ate this Agency's intention to dismiss/close/not docket the charge for the
Typed Nar	me and Title of EEOC or FEPA Official	Signature/initials
ļ <del></del>	James L. Bennett, Director	James L. Bennett/zb
то:	Chicago District Office	Date May 24, 2021
Ì	230 S. Dearborn Suite 1866	EEOC Charge No. 440-2021-02528
	Chicago, IL 60604	FEPA Charge No.

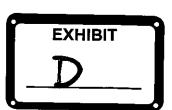
IN THE CIRCUIT COU COUNTY DEPA BRIAN POSTRELKO	7/6/2021 12:42 PM IRIS Y. MARTINEZ CIRCUIT CLERK COOK COUNTY, II 13927423		
	)		
Plaintiff,	)		
Vs.	) No.: 2021L006834		
CITY OF CHICAGO a Municipal	)		
CITY OF CHICAGO, a Municipal	)		
Corporation, POLICE DEPARTMENT,	)		
and officer CARRIE A. COONEY,	)		
individually, and as an agent and	)		
employee of the CITY OF CHICAGO,	)		
Defendants.	)		

#### **COMPLAINT AT LAW**

NOW COMES the Plaintiff, BRIAN POSTRELKO, by and through his attorneys, CUDA LAW OFFICES, LTD., and complaining of the Defendants, CITY OF CHICAGO, a Municipal Corporation, POLICE DEPARTMENT and officer CARRIE A. COONEY, individually and as an agent and employee of the CITY OF CHICAGO, states as follows:

#### COUNT I – VIOLATION OF HUMAN RIGHTS ACT BRIAN POSTRELKO vs CITY OF CHICAGO

- 1) Defendant, CITY OF CHICAGO, a Municipal Corporation, (hereinafter "CITY OF CHICAGO"), was and still is a duly organized and existing corporation in and about the City of Chicago, County of Cook and State of Illinois.
- 2) At all times relevant to this Complaint, Defendant, CARRIE A. COONEY, individually, was a police officer and agent and employee of Defendant, CITY OF CHICAGO.
- 3) On or about January 4, 2021, Plaintiff, BRIAN POSTRELKO, was offered a position with the CITY OF CHICAGO, which was at their Headquarters and within the Awards Department.



- 4) Throughout the course of BRIAN POSTRELKO'S employment with the CITY OF CHICAGO between January 2021, and March 2021, the Defendant, CARRIE A. COONEY, as an agent and employee of Defendant, CITY OF CHICAGO, on several occasions, made inappropriate comments and advances towards BRIAN POSTRELKO.
- 5) During these encounters Defendant CARRIE A. COONEY as agent and employee of Defendant, CITY OF CHICAGO:
  - a. Took an unconsented and inappropriate picture of BRIAN POSTRELKO's buttocks:
  - b. Pulled BRIAN POSTRELKO by his backpack without his consent;
  - c. Touched BRIAN POSTRELKO on his back and neck without his consent;
  - d. Grazed up against BRIAN POSTRELKO's buttocks and back without his consent;
  - e. Grabbed and fixed BRIAN POSTRELKO's shirt collar without his consent;
  - f. Violated social distancing protocols;
  - g. Made inappropriate and unwanted sexual comments towards BRIAN POSTRELKO;
  - h. Sexually harassed BRIAN POSTRELKO;
  - Retaliated against BRIAN POSTRELKO for denying her inappropriate and unwanted advances;
  - j. Sexually discriminated against BRIAN POSTRELKO on the basis of his sex.
- 6) During the course of these encounters, Defendant CITY OF CHICAGO, knew or should have known about the inappropriate conduct directed at BRIAN POSTRELKO and failed to take appropriate action.

- 7) On each occasion during which the Defendant CARRIE A. COONEY made the foregoing inappropriate and sexually related overtures, BRIAN POSTRELKO, informed the Defendant that he objected to the advances, behavior and comments.
- 8) For purposes of this Complaint, CITY OF CHICAGO, was at all times herein Plaintiff's employer as contemplated by 775 ILCS 5/2-101(B)(1)(b).
- 9) At all times relevant, Plaintiff was an employee of, CITY OF CHICAGO, as contemplated by 775 ILCS 5/2-101(A)(1).
- 10) For purposes of this Complaint, Defendant, CARRIE A. COONEY, was a managerial employee and agent of Defendant CITY OF CHICAGO, as contemplated by 775 ILCS 5/2-102(D) and at all times relevant to this Complaint had managerial and supervisory authority over BRIAN POSTRELKO in his capacity as an employee of Defendant, CITY OF CHICAGO.
- 11) As a managerial and supervisory employee and agent of Defendant CITY OF CHICAGO, Defendant CARRIE A. COONEY engaged in the foregoing conduct set forth in Paragraphs 5.
- 12) This action is brought pursuant to Article II of the Illinois Human Rights Act [775 ILCS 5/2-101 et seq.].
- 13) The forgoing acts perpetrated against BRIAN POSTRELKO by the Defendant CARRIE A. COONEY constituted acts of sexual harassment, in violation of 775 ILCS 5/2-102(D).
- 14) Within 180 days of the forgoing acts of sexual harassment, BRIAN POSTRELKO brought a Charge of Discrimination against the Defendant CITY OF CHICAGO, before the

Illinois Department of Human Rights (hereinafter "the Department"), as contemplated by 775 ILCS 5/7A-102. A copy of said Charge of Discrimination is attached hereto as Exhibit A.

- 15) BRIAN POSTRELKO received his Notice of Rights letter from the EEOC on May 24, 2021. A copy of said Notice of Rights letter is attached hereto as Exhibit B.
- 16) As a result of the foregoing acts of sexual harassment perpetrated against him by the Defendant CARRIE A. COONEY, who was at the time acting as an agent of Defendant, CITY OF CHICAGO, and having managerial authority over BRIAN POSTRELKO, Plaintiff suffered severe and permanent emotional distress and psychological suffering and has suffered economic losses, which are a direct and proximate result of the foregoing harassment.
- 17) The acts of the Defendants were so outrageous as to warrant imposition of punitive damages authorized by the Illinois Human Rights Act in order to deter other employers from similar acts.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the Plaintiff and against the Defendant, CITY OF CHICAGO, for actual and punitive damages in an amount in excess of \$50,000.00.

### COUNT II – BATTERY BRIAN POSTRELKO vs CITY OF CHICAGO

- 18-28) Plaintiff, BRIAN POSTRELKO, adopts and realleges each and every allegation of Paragraphs 1 through 11 of Count I above as and for Paragraphs 18-28 of Count II of his Complaint as though fully set forth herein.
- 29) Between January 2021, and March 2021, Defendant CARRIE A. COONEY, as agent and employee of Defendant, CITY OF CHICAGO, without the consent of BRIAN POSTRELKO, made offensive physical contact with Plaintiff, causing him apprehension for his personal safety.

- 30) Contact with BRIAN POSTRELKO as set forth in Paragraph 5, constituted impermissible touching and battery perpetrated against BRIAN POSTRELKO.
- 31) As a direct and proximate result of the acts of battery perpetrated against him by Defendant CARRIE A. COONEY, as agent and employee of Defendant CITY OF CHICAGO, BRIAN POSTRELKO has suffered humiliation, shame and emotional distress.
- 32) The conduct of Defendant CARRIE A. COONEY, as agent and employee of Defendant CITY OF CHICAGO, is so outrageous as to warrant an award of punitive damages to deter others from similar conduct as authorized and contemplated by the Illinois Human Rights Act.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the Plaintiff and against the Defendant, CARRIE A. COONEY, for actual and punitive damages in an amount in excess of \$50,000.00.

### COUNT III – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS BRIAN POSTRELKO vs CITY OF CHICAGO

- 33-43) Plaintiff, BRIAN POSTRELKO, adopts and realleges each and every allegation of Paragraphs 1 through 11 of Count I above as and for Paragraphs 33-43 of Count III of his Complaint as though fully set forth herein.
- 44) The inappropriate sexual advances and impermissible touching of the Plaintiff as set forth in Paragraph 5 hereof were willful and deliberate and were of such a character that any reasonable person would know they would cause the Plaintiff, BRIAN POSTRELKO, to suffer emotional distress.
- 45) That in so acting, the Defendant CARRIE A. COONEY, as agent and employee of Defendant, CITY OF CHICAGO, intentionally inflicted emotional distress upon BRIAN POSTRELKO.

- 46) As a result of the conduct of the Defendant CARRIE A. COONEY, as agent and employee of Defendant CITY OF CHICAGO, as expressed in Paragraph 5 hereof, BRIAN POSTRELKO was caused to suffer severe and permanent emotional distress.
- 47) The conduct of the Defendant CARRIE A. COONEY, as agent and employee of Defendant CITY OF CHICAGO, was so outrageous as to warrant an award of punitive damages to deter others from similar conduct as authorized and contemplated by the Illinois Human Rights Act.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the Plaintiff and against the Defendant, CITY OF CHICAGO, for actual and punitive damages in an amount in excess of \$50,000.00.

#### <u>COUNT IV – VIOLATION OF HUMAN RIGHTS ACT</u> <u>BRIAN POSTRELKO vs CARRIE A. COONEY, Individually</u>

- 48) At all times relevant to this Complaint, Defendant CARRIE A. COONEY, individually was a police officer and agent and employee of Defendant, CITY OF CHICAGO.
- 49) On or about January 4, 2021, Plaintiff BRIAN POSTRELKO was offered a position with the CITY OF CHICAGO.
- 50) Throughout the course of BRIAN POSTRELKO'S employment with the CITY OF CHICAGO between January 2021, and March 2021, the Defendant, CARRIE A. COONEY, as an agent and employee of Defendant, CITY OF CHICAGO, on several occasions, made inappropriate comments and advances towards BRIAN POSTRELKO.
  - 51) During these encounters Defendant CARRIE A. COONEY, individually:
    - a. Took an unconsented and inappropriate picture of BRIAN POSTRELKO's buttocks;
    - b. Pulled BRIAN POSTRELKO by his backpack without his consent;

- Touched BRIAN POSTRELKO on his back and neck without his consent;
- d. Grazed up against BRIAN POSTRELKO's buttocks and back without his consent;
- e. Grabbed and fixed BRIAN POSTRELKO's shirt collar without his consent;
- f. Violated social distancing protocols;
- g. Made inappropriate and unwanted sexual comments towards BRIAN POSTRELKO;
- h. Sexually harassed BRIAN POSTRELKO;
- i. Retaliated against BRIAN POSTRELKO for denying her inappropriate and unwanted advances; and
- j. Sexually discriminated against BRIAN POSTRELKO on the basis of his sex.
- 52) On each occasion during which the Defendant CARRIE A. COONEY made the foregoing inappropriate and sexually related overtures, BRIAN POSTRELKO informed the Defendant that he objected to the advances, behavior and comments.
- 53) For purposes of this Complaint, CITY OF CHICAGO, was at all times herein Plaintiff's employer as contemplated by 775 ILCS 5/2-101(B)(1)(b).
- 54) At all times relevant, Plaintiff was an employee of, CITY OF CHICAGO, as contemplated by 775 ILCS 5/2-101(A)(1).
- 55) For purposes of this Complaint, Defendant, CARRIE A. COONEY, was a managerial employee and agent of Defendant CITY OF CHICAGO, as contemplated by 775 ILCS 5/2-102(D) and at all times relevant to this Complaint had managerial and supervisory authority over BRIAN POSTRELKO in his capacity as an employee of Defendant, CITY OF CHICAGO.

- 56) As a managerial and supervisory employee and agent of Defendant CITY OF CHICAGO, Defendant CARRIE A. COONEY engaged in the foregoing conduct set forth in Paragraph 5.
- 57) This action is brought pursuant to Article II of the Illinois Human Rights Act [775 ILCS 5/2-101 et seq.].
- 58) The forgoing acts perpetrated against BRIAN POSTRELKO by the Defendant CARRIE A. COONEY constituted acts of sexual harassment, in violation of 775 ILCS 5/2-102(D).
- 59) Within 180 days of the forgoing acts of sexual harassment, BRIAN POSTRELKO brought a Charge of Discrimination against the Defendant CITY OF CHICAGO, before the Illinois Department of Human Rights (hereinafter "the Department"), as contemplated by 775 ILCS 5/7A-102. A copy of said Charge of Discrimination is attached hereto as Exhibit A.
- 60) BRIAN POSTRELKO received his Notice of Rights letter from the EEOC on May 24, 2021. A copy of said Notice of Rights letter is attached hereto as Exhibit B.
- As a result of the foregoing acts of sexual harassment perpetrated against him by the Defendant CARRIE A. COONEY, individually, who at that time had managerial authority over BRIAN POSTRELKO, Plaintiff suffered severe and permanent emotional distress and psychological suffering and has suffered economic losses, which are a direct and proximate result of the foregoing harassment.
- 62) The acts of the Defendants were so outrageous as to warrant imposition of punitive damages authorized by the Illinois Human Rights Act in order to deter other employers from similar acts.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the

Plaintiff and against the Defendant, CARRIE A. COONEY, individually, for actual and punitive damages in an amount in excess of \$50,000.00.

### COUNT V – BATTERY BRIAN POSTRELKO vs CARRIE A. COONEY, Individually

- 63-71) Plaintiff, BRIAN POSTRELKO, adopts and realleges each and every allegation of Paragraphs 48 through 56 of Count IV above as and for Paragraphs 63-71 of Count V of his Complaint as though fully set forth herein.
- 72) Between January 2021, and March 2021, Defendant CARRIE A. COONEY, individually, without the consent of BRIAN POSTRELKO, made offensive physical contact with Plaintiff, causing him apprehension for his personal safety.
- 73) Contact with BRIAN POSTRELKO as set forth in Paragraph 5, constituted impermissible touching and battery perpetrated against BRIAN POSTRELKO.
- 74) As a direct and proximate result of the acts of battery perpetrated against him by Defendant CARRIE A. COONEY, individually, Plaintiff BRIAN POSTRELKO has suffered humiliation, shame and emotional distress.
- 75) The conduct of Defendant CARRIE A. COONEY, individually, is so outrageous as to warrant an award of punitive damages to deter others from similar conduct as authorized and contemplated by the Illinois Human Rights Act.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the Plaintiff and against the Defendant, CARRIE A. COONEY, individually, for actual and punitive damages in an amount in excess of \$50,000.00.

### COUNT VI – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS BRIAN POSTRELKO vs CARRIE A. COONEY, Individually

76-84) Plaintiff, BRIAN POSTRELKO, adopts and realleges each and every allegation of Paragraphs 48 through 56 of Count IV above as and for Paragraphs 76-84 of Count VI of his

Complaint as though fully set forth herein.

85) The inappropriate sexual advances and impermissible touching of the Plaintiff as

set forth in Paragraph 5 hereof were willful and deliberate and were of such a character that any

reasonable person would know they would cause the Plaintiff, BRIAN POSTRELKO, to suffer

emotional distress.

86) That in so acting, the Defendant CARRIE A. COONEY, individually,

intentionally inflicted emotional distress upon BRIAN POSTRELKO.

87) As a result of the conduct of the Defendant CARRIE A. COONEY, individually,

as expressed in Paragraph 5 hereof, Plaintiff BRIAN POSTRELKO was caused to suffer severe

and permanent emotional distress.

88) The conduct of the Defendant CARRIE A. COONEY, individually, was so

outrageous as to warrant an award of punitive damages to deter others from similar conduct as

authorized and contemplated by the Illinois Human Rights Act.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the

Plaintiff and against the Defendant, CARRIE A. COONEY, individually, for actual and punitive

damages in an amount in excess of \$50,000.00.

Respectfully submitted

Anthony Cuda

By:

Attorney for Plaintiff

Attorney No: 27099

CUDA LAW OFFICES, LTD.

6525 W. North Avenue, Suite 204

Oak Park, Illinois 60302

708-383-4900

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EP BATEFUL	
虚	

210524.012

EEOC Form 5 (11/09)			FILED	
CHARGE OF DISCRIMINATION	Charge		gency(rest charge PM o(s)RIS Y. MARTINEZ	
This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.	X	FEPA EEOC	CIRCUIT CLERK COOK COUNTY IL	
ILLINOIS DEPARTMENT	ا ا		1392742and EEOC	
State or local Agen		·	1392742010 LLOC	
Name (indicate Mr., Ms., Mrs.)		Home Phone	Year of Birth	
MR. BRIAN POSTRELKO		(773) 972-70	09 1977	
7061 NORTH KEDZIE AVENUE, STE 1713, CHICA				
Named is the Employer, Labor Organization, Employment Agency, Appre That I Believe Discriminated Against Me or Others. (If more than two, IIs	enticesnip Com st under PART/	CULARS below.)	ial Government Agency	
Name		No. Employees, Members	Phone No.	
CHICAGO POLICE DEPARTMENT		501+	(312) 746-6000	
3510 SOUTH MICHIGAN AVENUE, CHICAGO, IL (	and ZIP Code			
Name		No. Employees, Members	Phone No.	
Street Address City, State	and ZIP Code	· · · · · · · · · · · · · · · · · · ·		
RACE COLOR X SEX RELIGION  X RETALIATION AGE DISABILITY GEN  OTHER (Specify)  THE PARTICULARS ARE (if additional paper is needed, attach extra sheet(s)): I began my employment with Respondent on or al is Police Officer. During my employment, I have be also subjected to different terms and conditions of harsher work assignments. I complained to Respondence of the protected activity, in violation of Tile amended.	een subject of employn ondent. se of my s	gin 01-29-20 Der 31, 2005. My ted to sexual hanent, including the ex, male, and in	continuing action  current position arassment. I was put not limited to,  retaliation for act of 1964, as an RIGHTS ISION	
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.  I declare under penalty of perjury that the above is true and correct.	I swear or af	firm that I have read t	d Local Agency Requirements  he above charge and that it e, information and belief.	
Digitally signed by Brian Postrelko on 05-12-2021 02:00 PM EDT  SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)  EXHIBIT				

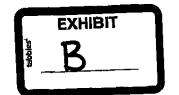
EEOC Form 161 (11/2020)

#### U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

			DISMISSAL AND NOTIC	E OF	- Rights	
		From:	Chicago District Offic 230 S. Dearborn Suite 1866 Chicago, IL 60604	8		
		<u>-</u>	rson(s) aggrieved whose identity is L (29 CFR §1601.7(a))			
EEO	C Charge No.		EEOC Representative			Telephone No.
440	-2021-02528		Katarzyna Hammond, Investigator			(312) 872-9703
THE	E EEOC IS CL	OSING ITS FIL	E ON THIS CHARGE FOR THE F	OLLO	WING REASON:	
	The fa	acts alleged in the	charge fail to state a claim under any	of the	statutes enforced by the EE	eoc.
	Your	allegations did not	involve a disability as defined by the	Americ	ans With Disabilities Act.	
	The R	Respondent emplo	ys less than the required number of er	nploye	es or is not otherwise cove	red by the statutes.
	Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge					the date(s) of the alleged
The EEOC issues the following determination: The EEOC will not proceed further with its investigation, and makes a determination about whether further investigation would establish violations of the statute. This does not mean the claim have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEO makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.					s does not mean the claims ith the statutes. The EEOC	
	The E	EEOC has adopted	the findings of the state or local fair e	mploy	ment practices agency that	investigated this charge.
	Other	r (briefly state)				
			- NOTICE OF SUIT (See the additional information at			
Disc You laws	crimination in may file a lav suit must be f	n Employment a wsuit against the filed <u>WITHIN 90</u>	sabilities Act, the Genetic Inform Act: This will be the only notice of respondent(s) under federal law DAYS of your receipt of this not ased on a claim under state law m	dism based otice;	issal and of your right to I on this charge in federa or your right to sue base	sue that we will send you.
alle	ged EPA unde	EPA): EPA suits erpayment. This uit may not be o	must be filed in federal or state co means that backpay due for any collectible.	urt wil viola	thin 2 years (3 years for v tions that occurred <u>mo</u>	villful violations) of the re than 2 years (3 years)
			On behalf of t	he Cor	mmission	
			Julianne Bowmar	ver	v	5/24/2021
End	olosures(s)		Julianne Bov District Dire	/man,		(Date Issued)

co: CITY OF CHICAGO LAW DEPARTMENT LABOR DIVISION Eileen Geary, Esq.

Chief Assistant Corporation Counsel
2 North LaSaile Street, Suite 660
Chicago, IL 60602



### IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION

FILED 11/5/2021 4:42 PM IRIS Y. MARTINEZ CIRCUIT CLERK COOK COUNTY, IL 2021L006834

BRIAN POSTRELKO	)	
Plaintiff,	)	
Vs.	)	No.: 21 L 6834
CITY OF CHICAGO, a Municipal	)	
Corporation, POLICE DEPARTMENT, and officer CARRIE A. COONEY,	)	
individually, and as an agent and employee of the CITY OF CHICAGO,	)	
Defendants.	)	

#### NOTICE OF FILING

To: Mr. Scott Crouch, Ms. Jessica Durkin 2 N. LaSalle, Suite 640

Chicago, Illinois 60602

Scott.crouch@cityofchicago.org; Jessica.durkin@cityofchicago.org

Please take Notice on the 5<sup>th</sup> day of **November**, **2021** we filed with the Clerk of the Circuit Court of Cook County, Illinois, certain documents, copies of which are attached hereto, to wit:

### \*PLAINTIFF'S RESPONSE TO DEFENDANT, CITY OF CHICAGO'S, MOTION TO DISMISS PURSUANT TO 735 ILCS 5/2-619.1

I, Anthony Cuda, the attorney, certify that I served this Notice and copies of the foregoing documents to all counsel of record by email to the addresses listed above, on the 5<sup>th</sup> day of November, 2021.

*A*nthony Cuda

Attorney No.: 27099 CUDA LAW OFFICES, LTD. Attorney for Plaintiff 6525 West North Avenue, Suite 204 Oak Park, Illinois 60302 708-383-4900 acuda@cudalaw.com

# IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION

BRIAN POSTRELKO,	)	
Plaintiff,	)	
$\mathbf{v}.$	)	No.: 2021 L 006834
CITY OF CHICAGO, a Municipal Corporation, POLICE DEPARTMENT, and officer CARRIE A. COONEY, individually, and as an agent and	) ) )	Commercial Calendar T Hon. Daniel J. Kubasiak
employee of the CITY OF CHICAGO,	)	
Defendants.	)	

# AGREED ORDER

This matter coming to be heard on Defendants' Agreed Motion to Strike the Briefing Schedule and Permit Plaintiff to File an Amended Complaint, it is hereby ordered:

- 1. The briefing schedule entered on October 13, 2021 is hereby stricken.
- 2. The November 29, 2021, 8:45 a.m. clerk status date is hereby stricken.
- 3. Plaintiff's request to file an amended complaint is granted.
- 4. Plaintiff shall have until December 15, 2021, to file an Amended Complaint.
- 5. Defendants shall have 30 days thereafter, until January 14, 2022, to respond to the Amended Complaint.
- 6. Defendant Cooney and Defendant City of Chicago's Motions to Dismiss are withdrawn without prejudice as moot.
- 7. This matter is set for status via Zoom remote conferencing on January 31, 2022 at 9:30 a.m. Zoom ID: 913 6588 1682; Zoom Password: 894316; Zoom Conference Call # 1-312-626-

6799.

Judge Daniel J. Kubasiak-2072

So ordered.

IRIS Y. MARTINEZ LERK OF THE CIRCUIT COURT OF COOK COUNTY, IL

Honorable Daniel J. Kubasiak

Case: 1:22-cv-00173 Document #: 1-1 Filed: 01/11/22 Page 111 of 127 PageID #:114

# Prepared by:

Attorney No. 90909
Scott Crouch
Assistant Corporation Counsel
City of Chicago Department of Law, Employment Litigation Division
2 N. LaSalle Street, Suite 640, Chicago, IL 60602
312-744-8369 | Scott.crouch@cityofChicago.org
Counsel for Defendant City of Chicago

FILED DATE: 12/15/2021 12:59 PM 2021L006834

## IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION

FILED
12/15/2021 12:59 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2021L006834
Calendar, T
15966838

		•	
BRIAN POSTRELKO	)		
	)		
Plaintiff,	)		
	)		
Vs.	)	No.: 2021L006834	
	)		
CITY OF CHICAGO, a Municipal	)		
Corporation, POLICE DEPARTMENT,	)		
and officer CARRIE A. COONEY,	)		
individually, and as an agent and	)		
employee of the CITY OF CHICAGO,	)		
	)		
Defendants.	)		

#### PLAINTIFF'S FIRST AMENDED COMPLAINT AT LAW

NOW COMES the Plaintiff, BRIAN POSTRELKO, by and through his attorneys, CUDA LAW OFFICES, LTD., and complaining of the Defendants, CITY OF CHICAGO, a Municipal Corporation, POLICE DEPARTMENT and officer CARRIE A. COONEY, individually and as an agent and employee of the CITY OF CHICAGO, states as follows:

#### COUNT I – VIOLATION OF HUMAN RIGHTS ACT BRIAN POSTRELKO vs CITY OF CHICAGO

- 1) Defendant, CITY OF CHICAGO, a Municipal Corporation, (hereinafter "CITY OF CHICAGO"), was and still is a duly organized and existing corporation in and about the City of Chicago, County of Cook and State of Illinois.
- 2) At all times relevant to this Complaint, Defendant, CARRIE A. COONEY, individually, was a police officer and agent and employee of Defendant, CITY OF CHICAGO.
- 3) On or about January 4, 2021, Plaintiff, BRIAN POSTRELKO, was offered a position with the CITY OF CHICAGO, which was at their Headquarters and within the Awards Department.

- 4) Throughout the course of BRIAN POSTRELKO'S employment with the CITY OF CHICAGO between January 2021, and March 2021, the Defendant, CARRIE A. COONEY, as an agent and employee of Defendant, CITY OF CHICAGO, on several occasions, made inappropriate comments and advances towards BRIAN POSTRELKO.
- 5) During these encounters Defendant CARRIE A. COONEY as agent and employee of Defendant, CITY OF CHICAGO:
  - Took an unconsented and inappropriate picture of BRIAN POSTRELKO's buttocks;
  - b. Pulled BRIAN POSTRELKO by his backpack without his consent;
  - c. Touched BRIAN POSTRELKO on his back and neck without his consent;
  - d. Grazed up against BRIAN POSTRELKO's buttocks and back without his consent;
  - e. Grabbed and fixed BRIAN POSTRELKO's shirt collar without his consent;
  - f. Violated social distancing protocols;
  - g. Made inappropriate and unwanted sexual comments towards BRIAN POSTRELKO;
  - h. Sexually harassed BRIAN POSTRELKO;
  - i. Retaliated against BRIAN POSTRELKO for denying her inappropriate and unwanted advances;
  - j. Sexually discriminated against BRIAN POSTRELKO on the basis of his sex.
- 6) During the course of these encounters, Defendant CITY OF CHICAGO, knew or should have known about the inappropriate conduct directed at BRIAN POSTRELKO and failed to take appropriate action.

- 7) On each occasion during which the Defendant CARRIE A. COONEY made the foregoing inappropriate and sexually related overtures, BRIAN POSTRELKO, informed the Defendant that he objected to the advances, behavior and comments.
- 8) CITY OF CHICAGO, was at all times herein Plaintiff's employer as contemplated by 775 ILCS 5/2-101(B)(1)(b).
- 9) At all times relevant, Plaintiff was an employee of, CITY OF CHICAGO, as contemplated by 775 ILCS 5/2-101(A)(1).
- 10) For purposes of this Complaint, Defendant, CARRIE A. COONEY, was a managerial employee and agent of Defendant CITY OF CHICAGO, as contemplated by 775 ILCS 5/2-102(D) and at all times relevant to this Complaint had managerial and supervisory authority over BRIAN POSTRELKO in his capacity as an employee of Defendant, CITY OF CHICAGO.
- 11) As a managerial and supervisory employee and agent of Defendant CITY OF CHICAGO, Defendant CARRIE A. COONEY engaged in the foregoing conduct set forth in Paragraphs 5.
- 12) This action is brought pursuant to Article II of the Illinois Human Rights Act [775 ILCS 5/2-101 et seq.].
- 13) The forgoing acts perpetrated against BRIAN POSTRELKO by the Defendant CARRIE A. COONEY constituted acts of sexual harassment, in violation of 775 ILCS 5/2-102(D).
- 14) Within 180 days of the forgoing acts of sexual harassment, BRIAN POSTRELKO brought a Charge of Discrimination against the Defendant CITY OF CHICAGO, before the

Illinois Department of Human Rights (hereinafter "the Department"), as contemplated by 775 ILCS 5/7A-102. A copy of said Charge of Discrimination is attached hereto as Exhibit A.

- 15) BRIAN POSTRELKO received his Notice of Rights letter from the EEOC on May 24, 2021. A copy of said Notice of Rights letter is attached hereto as Exhibit B.
- As a result of the foregoing acts of sexual harassment perpetrated against him by the Defendant CARRIE A. COONEY, who was at the time acting as an agent of Defendant, CITY OF CHICAGO, and having managerial authority over BRIAN POSTRELKO, Plaintiff suffered severe and permanent emotional distress and psychological suffering and has suffered economic losses, which are a direct and proximate result of the foregoing harassment.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the Plaintiff and against the Defendant, CITY OF CHICAGO, for actual damages in an amount in excess of \$50,000.00.

# COUNT II – VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, as amended BRIAN POSTRELKO vs CITY OF CHICAGO

- 17) Defendant, CITY OF CHICAGO, a Municipal Corporation, (hereinafter "CITY OF CHICAGO"), was and still is a duly organized and existing corporation in and about the City of Chicago, County of Cook and State of Illinois.
- 18) At all times relevant to this Complaint, Defendant, CARRIE A. COONEY, individually, was a police officer and agent and employee of Defendant, CITY OF CHICAGO.
- 19) On or about January 4, 2021, Plaintiff, BRIAN POSTRELKO, was offered a position with the CITY OF CHICAGO, which was at their Headquarters and within the Awards Department.

- 20) Throughout the course of BRIAN POSTRELKO'S employment with the CITY OF CHICAGO between January 2021, and March 2021, the Defendant, CARRIE A. COONEY, as an agent and employee of Defendant, CITY OF CHICAGO, on several occasions, made inappropriate comments and advances towards BRIAN POSTRELKO.
- 21) During these encounters Defendant CARRIE A. COONEY as agent and employee of Defendant, CITY OF CHICAGO:
  - Took an unconsented and inappropriate picture of BRIAN POSTRELKO's buttocks;
  - b. Pulled BRIAN POSTRELKO by his backpack without his consent;
  - c. Touched BRIAN POSTRELKO on his back and neck without his consent;
  - d. Grazed up against BRIAN POSTRELKO's buttocks and back without his consent;
  - e. Grabbed and fixed BRIAN POSTRELKO's shirt collar without his consent;
  - f. Violated social distancing protocols;
  - g. Made inappropriate and unwanted sexual comments towards BRIAN POSTRELKO;
  - h. Sexually harassed BRIAN POSTRELKO;
  - i. Retaliated against BRIAN POSTRELKO for denying her inappropriate and unwanted advances;
  - j. Sexually discriminated against BRIAN POSTRELKO on the basis of his sex.
- 22) During the course of these encounters, Defendant CITY OF CHICAGO, knew or should have known about the inappropriate conduct directed at BRIAN POSTRELKO and failed to take appropriate action.

- On each occasion during which the Defendant CARRIE A. COONEY made the foregoing inappropriate and sexually related overtures, BRIAN POSTRELKO, informed the Defendant that he objected to the advances, behavior and comments.
- 24) CITY OF CHICAGO, was at all times herein Plaintiff's employer as contemplated by 42 USC § 2000e(b).
- 25) At all times relevant, Plaintiff was an employee of, CITY OF CHICAGO, as contemplated by 42 USC § 2000e(f).
- Defendant, CARRIE A. COONEY, was a managerial employee and agent of Defendant CITY OF CHICAGO, and at all times relevant to this Complaint had managerial and supervisory authority over BRIAN POSTRELKO in his capacity as an employee of Defendant, CITY OF CHICAGO.
- As a managerial and supervisory employee and agent of Defendant CITY OF CHICAGO, Defendant CARRIE A. COONEY engaged in the foregoing conduct set forth in Paragraphs 5.
- 28) Title VII of the Civil Rights Act of 1964, as amended, makes it unlawful for an employer, "(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a).

- 29) The forgoing acts perpetrated against BRIAN POSTRELKO by the Defendant CARRIE A. COONEY constituted acts of sexual discrimination, in violation of 42 U.S.C. § 2000e et seq.
- 30) Within 180 days of the forgoing acts of sexual harassment, BRIAN POSTRELKO brought a Charge of Discrimination against the Defendant CITY OF CHICAGO, before the EEOC and Illinois Department of Human Rights (hereinafter "the Department"), a copy of said Charge of Discrimination is attached hereto as Exhibit A.
- 31) BRIAN POSTRELKO received his Notice of Rights letter from the EEOC on May 24, 2021. A copy of said Notice of Rights letter is attached hereto as Exhibit B.
- As a result of the foregoing acts of sexual harassment perpetrated against him by the Defendant CARRIE A. COONEY, who was at the time acting as an agent of Defendant, CITY OF CHICAGO, and having managerial authority over BRIAN POSTRELKO, Plaintiff suffered severe and permanent emotional distress and psychological suffering and has suffered economic losses, which are a direct and proximate result of the foregoing harassment.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the Plaintiff and against the Defendant, CITY OF CHICAGO, for actual damages in an amount in excess of \$50,000.00.

#### <u>COUNT III – BATTERY</u> <u>BRIAN POSTRELKO vs CITY OF CHICAGO</u>

- 33-43) Plaintiff, BRIAN POSTRELKO, adopts and realleges each and every allegation of Paragraphs 1 through 11 of Count I above as and for Paragraphs 33-43 of Count III of his Complaint as though fully set forth herein.
- 44) Between January 2021, and March 2021, Defendant CARRIE A. COONEY, as agent and employee of Defendant, CITY OF CHICAGO, without the consent of BRIAN

POSTRELKO, made offensive physical contact with Plaintiff, causing him apprehension for his personal safety.

- 45) Contact with BRIAN POSTRELKO as set forth in Paragraph 5, constituted impermissible touching and battery perpetrated against BRIAN POSTRELKO.
- As a direct and proximate result of the acts of battery perpetrated against him by Defendant CARRIE A. COONEY, as agent and employee of Defendant CITY OF CHICAGO, BRIAN POSTRELKO has suffered humiliation, shame and emotional distress.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the Plaintiff and against the Defendant, CARRIE A. COONEY, for actual damages in an amount in excess of \$50,000.00.

#### COUNT IV – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS BRIAN POSTRELKO vs CITY OF CHICAGO

- 47-57) Plaintiff, BRIAN POSTRELKO, adopts and realleges each and every allegation of Paragraphs 1 through 11 of Count I above as and for Paragraphs 47-57 of Count IV of his Complaint as though fully set forth herein.
- 58) The inappropriate sexual advances and impermissible touching of the Plaintiff as set forth in Paragraph 5 hereof were willful and deliberate and were of such a character that any reasonable person would know they would cause the Plaintiff, BRIAN POSTRELKO, to suffer emotional distress.
- 59) That in so acting, the Defendant CARRIE A. COONEY, as agent and employee of Defendant, CITY OF CHICAGO, intentionally inflicted emotional distress upon BRIAN POSTRELKO.

60) As a result of the conduct of the Defendant CARRIE A. COONEY, as agent and employee of Defendant CITY OF CHICAGO, as expressed in Paragraph 5 hereof, BRIAN POSTRELKO was caused to suffer severe and permanent emotional distress.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the Plaintiff and against the Defendant, CITY OF CHICAGO, for actual damages in an amount in excess of \$50,000.00.

#### COUNT V – VIOLATION OF HUMAN RIGHTS ACT BRIAN POSTRELKO vs CARRIE A. COONEY, Individually

- 61) At all times relevant to this Complaint, Defendant CARRIE A. COONEY, individually was a police officer and agent and employee of Defendant, CITY OF CHICAGO.
- 62) On or about January 4, 2021, Plaintiff BRIAN POSTRELKO was offered a position with the CITY OF CHICAGO.
- 63) Throughout the course of BRIAN POSTRELKO'S employment with the CITY OF CHICAGO between January 2021, and March 2021, the Defendant, CARRIE A. COONEY, as an agent and employee of Defendant, CITY OF CHICAGO, on several occasions, made inappropriate comments and advances towards BRIAN POSTRELKO.
  - 64) During these encounters Defendant CARRIE A. COONEY, individually:
    - a. Took an unconsented and inappropriate picture of BRIAN POSTRELKO's buttocks;
    - b. Pulled BRIAN POSTRELKO by his backpack without his consent;
    - c. Touched BRIAN POSTRELKO on his back and neck without his consent;
    - d. Grazed up against BRIAN POSTRELKO's buttocks and back without his consent;
    - e. Grabbed and fixed BRIAN POSTRELKO's shirt collar without his consent;
    - f. Violated social distancing protocols;

- Made inappropriate and unwanted sexual comments towards BRIAN POSTRELKO;
- h. Sexually harassed BRIAN POSTRELKO;
- i. Retaliated against BRIAN POSTRELKO for denying her inappropriate and unwanted advances; and
- j. Sexually discriminated against BRIAN POSTRELKO on the basis of his sex.
- 65) On each occasion during which the Defendant CARRIE A. COONEY made the foregoing inappropriate and sexually related overtures, BRIAN POSTRELKO informed the Defendant that he objected to the advances, behavior and comments.
- 66) For purposes of this Complaint, CITY OF CHICAGO, was at all times herein Plaintiff's employer as contemplated by 775 ILCS 5/2-101(B)(1)(b).
- 67) At all times relevant, Plaintiff was an employee of, CITY OF CHICAGO, as contemplated by 775 ILCS 5/2-101(A)(1).
- 68) For purposes of this Complaint, Defendant, CARRIE A. COONEY, was a managerial employee and agent of Defendant CITY OF CHICAGO, as contemplated by 775 ILCS 5/2-102(D) and at all times relevant to this Complaint had managerial and supervisory authority over BRIAN POSTRELKO in his capacity as an employee of Defendant, CITY OF CHICAGO.
- 69) As a managerial and supervisory employee and agent of Defendant CITY OF CHICAGO, Defendant CARRIE A. COONEY engaged in the foregoing conduct set forth in Paragraph 5.
- 70) This action is brought pursuant to Article II of the Illinois Human Rights Act [775 ILCS 5/2-101 et seq.].

- 71) The forgoing acts perpetrated against BRIAN POSTRELKO by the Defendant CARRIE A. COONEY constituted acts of sexual harassment, in violation of 775 ILCS 5/2-102(D).
- 72) Within 180 days of the forgoing acts of sexual harassment, BRIAN POSTRELKO brought a Charge of Discrimination against the Defendant CITY OF CHICAGO, before the Illinois Department of Human Rights (hereinafter "the Department"), as contemplated by 775 ILCS 5/7A-102. A copy of said Charge of Discrimination is attached hereto as Exhibit A.
- 73) BRIAN POSTRELKO received his Notice of Rights letter from the EEOC on May 24, 2021. A copy of said Notice of Rights letter is attached hereto as Exhibit B.
- As a result of the foregoing acts of sexual harassment perpetrated against him by the Defendant CARRIE A. COONEY, individually, who at that time had managerial authority over BRIAN POSTRELKO, Plaintiff suffered severe and permanent emotional distress and psychological suffering and has suffered economic losses, which are a direct and proximate result of the foregoing harassment.
- 75) The acts of the Defendants were so outrageous as to warrant imposition of punitive damages authorized by the Illinois Human Rights Act in order to deter other employers from similar acts.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the Plaintiff and against the Defendant, CARRIE A. COONEY, individually, for actual and punitive damages in an amount in excess of \$50,000.00.

# COUNT VI – VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, as amended BRIAN POSTRELKO vs CARRIE A. COONEY, Individually

- 76) At all times relevant to this Complaint, Defendant CARRIE A. COONEY, individually was a police officer and agent and employee of Defendant, CITY OF CHICAGO.
- 77) On or about January 4, 2021, Plaintiff BRIAN POSTRELKO was offered a position with the CITY OF CHICAGO.
- 78) Throughout the course of BRIAN POSTRELKO'S employment with the CITY OF CHICAGO between January 2021, and March 2021, the Defendant, CARRIE A. COONEY, as an agent and employee of Defendant, CITY OF CHICAGO, on several occasions, made inappropriate comments and advances towards BRIAN POSTRELKO.
  - 79) During these encounters Defendant CARRIE A. COONEY, individually:
  - a. Took an unconsented and inappropriate picture of BRIAN POSTRELKO's buttocks;
  - b. Pulled BRIAN POSTRELKO by his backpack without his consent;
  - c. Touched BRIAN POSTRELKO on his back and neck without his consent;
  - d. Grazed up against BRIAN POSTRELKO's buttocks and back without his consent;
  - e. Grabbed and fixed BRIAN POSTRELKO's shirt collar without his consent;
  - f. Violated social distancing protocols;
  - g. Made inappropriate and unwanted sexual comments towards BRIAN POSTRELKO;
  - h. Sexually harassed BRIAN POSTRELKO;
  - Retaliated against BRIAN POSTRELKO for denying her inappropriate and unwanted advances; and

- j. Sexually discriminated against BRIAN POSTRELKO on the basis of his sex.
- 80) On each occasion during which the Defendant CARRIE A. COONEY made the foregoing inappropriate and sexually related overtures, BRIAN POSTRELKO informed the Defendant that he objected to the advances, behavior and comments.
- 81) CITY OF CHICAGO, was at all times herein Plaintiff's employer as contemplated by 42 USC § 2000e(b).
- 82) At all times relevant, Plaintiff was an employee of, CITY OF CHICAGO, as contemplated by 42 USC § 2000e(f).
- 83) For purposes of this Complaint, Defendant, CARRIE A. COONEY, was a managerial employee and agent of Defendant CITY OF CHICAGO, and at all times relevant to this Complaint had managerial and supervisory authority over BRIAN POSTRELKO in his capacity as an employee of Defendant, CITY OF CHICAGO.
- 84) As a managerial and supervisory employee and agent of Defendant CITY OF CHICAGO, Defendant CARRIE A. COONEY engaged in the foregoing conduct set forth in Paragraph 5.
- 85) Title VII of the Civil Rights Act of 1964, as amended, makes it unlawful for an employer, "(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a).

- 86) The forgoing acts perpetrated against BRIAN POSTRELKO by the Defendant CARRIE A. COONEY constituted acts of sexual discrimination, in violation of 42 U.S.C. § 2000e et seq.
- 87) Within 180 days of the forgoing acts of sexual harassment, BRIAN POSTRELKO brought a Charge of Discrimination against the Defendant CITY OF CHICAGO, before the EEOC and Illinois Department of Human Rights (hereinafter "the Department"), a copy of said Charge of Discrimination is attached hereto as Exhibit A.
- 88) BRIAN POSTRELKO received his Notice of Rights letter from the EEOC on May 24, 2021. A copy of said Notice of Rights letter is attached hereto as Exhibit B.
- 89) As a result of the foregoing acts of sexual harassment perpetrated against him by the Defendant CARRIE A. COONEY, individually, who at that time had managerial authority over BRIAN POSTRELKO, Plaintiff suffered severe and permanent emotional distress and psychological suffering and has suffered economic losses, which are a direct and proximate result of the foregoing harassment.
- 90) The acts of the Defendants were so outrageous as to warrant imposition of punitive damages authorized by Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e et seq.) in order to deter other employers from similar acts.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the Plaintiff and against the Defendant, CARRIE A. COONEY, individually, for actual and punitive damages in an amount in excess of \$50,000.00.

### COUNT VII – BATTERY BRIAN POSTRELKO vs CARRIE A. COONEY, Individually

- 91-96) Plaintiff, BRIAN POSTRELKO, adopts and realleges each and every allegation of Paragraphs 60 through 65 of Count V above as and for Paragraphs 91-96 of Count VII of his Complaint as though fully set forth herein.
- 97) Between January 2021, and March 2021, Defendant CARRIE A. COONEY, individually, without the consent of BRIAN POSTRELKO, made offensive physical contact with Plaintiff, causing him apprehension for his personal safety.
- 98) Contact with BRIAN POSTRELKO as set forth in Paragraph 5, constituted impermissible touching and battery perpetrated against BRIAN POSTRELKO.
- 99) As a direct and proximate result of the acts of battery perpetrated against him by Defendant CARRIE A. COONEY, individually, Plaintiff BRIAN POSTRELKO has suffered humiliation, shame and emotional distress.
- 100) The acts of the Defendants were so outrageous as to warrant imposition of punitive damages authorized by Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e et seq.) in order to deter other employers from similar acts.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the Plaintiff and against the Defendant, CARRIE A. COONEY, individually, for actual and punitive damages in an amount in excess of \$50,000.00.

### COUNT VIII – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS BRIAN POSTRELKO vs CARRIE A. COONEY, Individually

101-106) Plaintiff, BRIAN POSTRELKO, adopts and realleges each and every allegation of Paragraphs 60 through 65 of Count V above as and for Paragraphs 101-106 of Count VIII of his Complaint as though fully set forth herein.

107) The inappropriate sexual advances and impermissible touching of the Plaintiff as set forth in Paragraph 5 hereof were willful and deliberate and were of such a character that any reasonable person would know they would cause the Plaintiff, BRIAN POSTRELKO, to suffer emotional distress.

- 108) That in so acting, the Defendant CARRIE A. COONEY, individually, intentionally inflicted emotional distress upon BRIAN POSTRELKO.
- 109) As a result of the conduct of the Defendant CARRIE A. COONEY, individually, as expressed in Paragraph 5 hereof, Plaintiff BRIAN POSTRELKO was caused to suffer severe and permanent emotional distress.
- The acts of the Defendants were so outrageous as to warrant imposition of punitive damages authorized by Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e et seq.) in order to deter other employers from similar acts.

WHEREFORE, Plaintiff, BRIAN POSTRELKO, respectfully prays for judgment for the Plaintiff and against the Defendant, CARRIE A. COONEY, individually, for actual and punitive damages in an amount in excess of \$50,000.00.

Respectfully submitted

By:

Attorney for Plaintiff

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